

APPEAL NO. 011918
FILED SEPTEMBER 26, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 24, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability, and that the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify the employer of the claimed injury pursuant to Section 409.001. The claimant has appealed these determinations on evidentiary sufficiency grounds. The carrier's response urges the sufficiency of the evidence to support the challenged factual determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working as a welder on the demolition of a structure, he injured his back lifting the end of an I-beam which had just been cut by a coworker; that he reported the injury to his foreman, Mr. H, the next day; and that he worked in pain until seeing a doctor on April 2, 2001, who took him off work and has not released him to return to his heavy work. Mr. H testified that the claimant did not report a work-related injury to him until April 3, 2001, during a meeting in the employer's office at which time the claimant also refused to sign a "write-up" for not showing up for work the previous day.

The claimant had the burden to prove that he sustained the claimed injury, that he had disability as that term is defined in Section 401.011(16), and that he reported the claimed injury to his employer within 30 days of its occurrence or had good cause for not doing so. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do

not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **GENERAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LINDA LEWIS
1600 NORTH COLLINS BLVD., SUITE 300
RICHARDSON, TEXAS 75080.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge