

APPEAL NO. 011979
FILED SEPTEMBER 27, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 16, 2001. With regard to the disputed issues, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, (all dates are 2001 unless otherwise noted) and that the claimant did not have disability.

The claimant appeals, contending that the hearing officer's decision is not supported by the evidence, that he was injured "manhandling" a wheelbarrow over rough ground and that he has had disability. The respondent (carrier) responds urging affirmance.

DECISION

Affirmed.

The claimant testified that on _____, his first day on the job, he injured his low back "manhandling" a wheelbarrow full of bags of concrete and on the next load with the wheelbarrow he injured his knee. A coworker testified that the claimant told him that he had hurt himself moving concrete. It is undisputed that at lunchtime the claimant quit the job because he thought it was unsafe. The claimant testified that he thought his injuries were minor and did not report the injuries at the time. A coworker or supervisor, who took the claimant from the job site back to the shop, stated that the claimant told him "this job was not for me." The claimant reported a work-related injury on March 6 and sought medical treatment on March 7.

In a Work Status Report (TWCC 73) and office notes Dr. H diagnosed a right knee strain and lumbar strain and took the claimant off work. An MRI performed on March 7 on the right knee and lumbar spine was essentially normal. Dr. H referred the claimant to Dr. C, who on March 8 had an impression of status post right knee sprain and acute low back strain. The claimant was subsequently referred to Dr. A, a chiropractor, by his attorney. In evidence are several TWCC-73's either keeping the claimant off work or on restricted duty. Another MRI performed on April 7 showed a "meniscus parrot beak tear" of the right knee and a "2-3 mm" disc herniation at L4-5. The claimant returned to work at light duty on May 14.

The crux of this case is how credible was the claimant's testimony of an injury to his low back and knee and the claimant's trivialization of these injuries for eight days prior to reporting the injury. It is very clear that the hearing officer did not find the claimant's testimony credible. 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.)). 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); 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 **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS MERRITT
ACE USA
6600 E. CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge