

APPEAL NO. 012194
FILED NOVEMBER 5, 2001

Following a contested case hearing held on August 22, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from _____, through June 29, 2000. The appellant (carrier) has appealed these determinations, urging that the claimant failed to establish that he sustained a compensable injury because he conceded having made an untruthful statement when first reporting the injury and that because he did not sustain a compensable injury, he could not have disability. The claimant responded that the evidence is sufficient to support the challenged factual determinations.

DECISION

Affirmed.

The claimant testified that while working as a temporary employee repairing wood pallets, which weigh up to 50 pounds, he injured his back on _____, in the process of manually handling the pallets while the conveyor was broken. The claimant said that he sought medical treatment on _____, and conceded having first reported that he had injured his left ankle at home while pushing a coffee table with his foot. Ms. C, who was the human resources manager at the time, testified that the claimant had first reported injuring his ankle moving a coffee table at home, needing to be off work for medical treatment, and saying nothing about an injury at work. She said that on _____, four or five days after his first call, the claimant told her that he had injured his back at work and had not earlier reported it because he did not want the plant supervisors to think he could not perform the job because of his age. There was no disputed issue concerning the claimant's timely reporting of the claimed injury. The claimant sought disability through the date of the hearing and has not appealed the disability end date of June 29, 2000.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge