

APPEAL NO. 012548
FILED NOVEMBER 29, 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 September 25, 2001, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that he consequently did not have disability. The claimant appeals these determinations on evidentiary sufficiency grounds. The respondent (carrier) urges in response that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while dismounting a forklift in the employer's warehouse, he slipped, fell to the ground, and injured his back. He stated that he worked in pain through _____; reported the injury to his supervisor on January 1, 2001; sought medical treatment on January 10, 2001; and that when he returned to work on February 20, 2001, following a release by his doctor the previous day, he was advised that his employment had been terminated for having failed a drug screen test in January 2001. A coworker testified that he worked with the claimant in the warehouse during the _____, period; that he did not observe the claimant falling off a forklift; and that the claimant not only gave no indication of being injured but engaged in horseplay with a coworker which included chasing each other around the warehouse.

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.)). The hearing officer makes clear that he was not persuaded by the claimant's testimony and found the testimony of the coworker more credible. 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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name, and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge