

APPEAL NO. 020282
FILED MARCH 21, 2002

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 January 22, 2002, the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury to the right ankle in the form of a sprain/strain on _____, and that he has had disability from that injury beginning on May 1, 2001, and continuing through the date of the hearing. The appellant (self-insured) has requested our review, asserting that these determinations are against the great weight of the evidence. The claimant's response urges the sufficiency of the evidence to support our affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was employed by the self-insured as a custodian at a school; that he had been back at work for one week after being off work recovering from a compensable bug bite injury; and that as he pushed his cleaning cart down a wooden ramp next to a school building, the ramp collapsed under his weight, which he said was 400 pounds, and his ankle was injured. He said his doctor, who took him off work on May 1, 2001, has not yet released him to return to work. In contending that the incident which led to the injury did not happen, the self-insured noted certain conflicts between the claimant's testimony and other evidence related to the mechanism of the claimed injury; stressed the claimant's apparent ease of mobility, as captured in a surveillance videotape; and noted the absence of treatment during the claimant's prolonged time off work.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge