

APPEAL NO. 021065
FILED JUNE 13, 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 February 19 and March 26, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ or _____; that the respondent (self-insured) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that the claimant did not have disability because he did not sustain a compensable injury. The claimant has filed a request for review which we will treat as an appeal of the hearing officer's adverse factual determinations on evidentiary sufficiency grounds. The self-insured has filed a response, which first notes the claimant's failure to comply with Section 410.202(a) by serving a copy of his request for review on the self-insured and by clearly and concisely rebutting the hearing officer's decision on each issue for which review is sought. The self-insured next asserts that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while lifting the end of a railroad tie he was placing onto a forklift, he slipped in the mud and felt a pain in the area of his left groin and leg; that he reported the injury that day to his supervisor and a short time later to the "boss," Mr. M; and that he was taken off work by his doctor on February 20, 2001, and remains off work. Mr. M testified that the claimant did not report an injury to him on _____, but did report an injury on _____. The claimant insisted that he reported the injury on _____, although he conceded that the first two of the three Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) forms he filed stated an injury date of _____, while the third stated an injury date of _____. He explained that the latter date was the first day he saw his treating doctor.

The claimant had the burden to prove by a preponderance of the evidence 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 claimant had the same burden to prove that he timely reported the injury to the self-insured. 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. This holds true as well for the timely notice issue. 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.).

This hearing record is replete with conflicting and inconsistent evidence. 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. 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

**C. T. CORPORATION
811 DALLAS AVENUE
HOUSTON, TEXAS 77002.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge