APPEAL NO. 021128
FILED JUNE 20, 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 April 12, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, or on any other relevant date; that the respondent (carrier) is relieved of liability because of the claimant's failure, without good cause, to timely notify his employer of the claimed injury; and that the claimant has not had disability resulting from the claimed injury. The claimant has requested our review of these determinations for evidentiary sufficiency. The carrier has filed a response urging the sufficiency of the evidence to support the challenged determinations. The timely notice determination has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, while working as a grill chef in a fast food restaurant, he needed ice for a food well and the ice was jammed up in the ice maker; that he then slid a snow shovel through an opening in the machine and hit the piled up ice; and that the shovel bounced back at him and he felt pain in his shoulder. The claimant further testified that later that day he told a manager how he hurt his shoulder and also told this manager about the accident on two later occasions. The manager testified that the claimant only spoke to her once about right shoulder pain and never said how it happened. The claimant conceded that he did not seek medical attention for his injured right shoulder until after his employment was terminated for a "no call/no show" event. He indicated that he did not advise the doctor of three prior shoulder injuries because he did not recall them.

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. This holds true, as well, for the provision of timely notice of injury to the employer. 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. 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge