APPEAL NO. 021685
FILED AUGUST 7, 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 June 12, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and thus did not have disability. The claimant has filed an appeal, asserting that these determinations are not sufficiently supported by the evidence. The respondent (carrier) urges in response that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed as reformed.

At the outset, we take note of the pro se claimant's astute observation that the hearing officer's conclusions of law are misnumbered and that a sentence on the eighth line of his paragraph describing the evidence uses the word "only" when the word "any" was apparently intended. Neither typographical error is of substantive concern and we reform the Conclusions of Law to renumber Conclusion of Law No. 5 as No. 4. We further reform the hearing officer's decision to reflect that the claimant called Ms. C, the employer representative, as a witness.

The hearing officer did not err in determining that the claimant did not sustain the claimed injury and thus it follows that the finding of no disability is also not erroneous. The claimant described the manner in which his low back was injured at work as involving the lifting of metal plates off a pallet and spreading them around on the floor to be welded. On cross-examination, he was confronted with evidence of somewhat different descriptions of his actions at the time including the recorded statements of two coworkers which indicated that the claimant did not do heavy lifting on that shift.

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. 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 as reformed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C T CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Philip F. O'Neill
Appeals Panel

CONCUR:

_____
Susan M. Kelley
Appeals Panel

_____
Roy L. Warren
Appeals Judge