

APPEAL NO. 021894
FILED SEPTEMBER 11, 2002

Following a contested case hearing held in on July 3, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by concluding that the respondent (claimant) "sustained a compensable injury, a lumbar strain, on _____, but did not sustain an aggravation of his pre-existing degenerative disc disease or a post-traumatic stress disorder as a result of the incident of _____, or as a naturally flowing result of the lumbar strain injury." The hearing officer further concluded that the claimant had disability resulting from the lumbar strain injury beginning on August 14, 2001, and continuing through the date of the hearing. The appellant (self-insured) has appealed these determinations on evidentiary sufficiency grounds. The claimant filed a response, urging the sufficiency of the evidence to support an affirmance.

DECISION

Affirmed.

The claimant testified that while working as a school custodian on _____, he lifted a teacher's desk onto a dolly to move it and felt immediate low back pain. He said he continued working until his first treating doctor took him off work on August 14, 2001, and his medical records reflect that his doctor has kept him off work to prevent further spinal injury. The claimant's current treating doctor testified that the claimant sustained a lumbar strain injury when he lifted the desk and that this injury increased the pain of his preexisting dessicated and bulging lumbar discs at three levels. The self-insured contends that even if the claimant did sustain a lumbar strain, it should have long since resolved and the claimant cannot have disability from the noncompensable preexisting lumbar spine degenerative conditions.

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.

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:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge