

APPEAL NO. 022236
FILED OCTOBER 24, 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 August 14, 2002, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from January 20, 2002, through the date of the hearing. The appellant (self-insured) has filed an appeal which challenges the sufficiency of the evidence to support these determinations. The claimant's response urges the sufficiency of the evidence to warrant our affirmance.

DECISION

Affirmed.

The claimant, who had been a school bus driver for the self-insured for 15 years, testified that on _____, she stopped her bus, an older model, at some railroad tracks before crossing them; that she was wearing the seat belt; and that as she drove the bus across the tracks, the bus bounced over them and she did some bouncing in her seat and felt the "gyrations." She said that she had immediate pain in the back of her right leg, which later began to radiate up into her low back, and that on January 19, 2002, she called her primary care doctor and went to a hospital emergency room because of her pain. The claimant further stated that she continued to work until January 19, 2002, but could not work thereafter because of the pain, and that her doctor has had her off work since that time while she has been receiving chiropractic treatments. The claimant's records reflect that she was diagnosed with lumbar intervertebral disc syndrome and lumbar radiculopathy.

The hearing officer plainly states that the claimant's evidence is rife with inconsistencies and that some of her evidence is not credible. The hearing officer also found the testimony of her treating doctor, who testified without having her records at hand, not credible. Notwithstanding his comments on the credibility of the evidence, however, the hearing officer was persuaded that the claimant did establish that she sustained a back injury when she drove the bus over the railroad tracks and that she did have disability. The claimant had the burden to prove that she sustained the claimed injury and that she 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:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge