APPEAL NO. 032963
FILED DECEMBER 31, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held jointly for both docket numbers on October 20, 2003. Although the hearing officer wrote two separate Decision and Orders, the cases involved the same appellant (claimant), respondent (carrier), and employer, and the same body part with the only difference being two different dates of injury with slightly differing facts surrounding each alleged injury. We consider both docket numbers in the same appeal.

The hearing officer determined in (Docket No. 1), that the claimant did not sustain a compensable injury on (date of injury for Docket No. 1), and in (Docket No. 2), that the claimant did not sustain a compensable injury on (date of injury for Docket No. 2).

The claimant filed separate appeals for both docket numbers, rebutting the hearing officer's Statement of the Evidence on a paragraph-by-paragraph basis. In addition, the claimant, for the first time on appeal, alleges that he received no response on his requests for subpoenas of certain individuals, thereby denying him the "opportunity to refute their written statements," and that the carrier had not responded to his interrogatories. The carrier responded to the claimant's allegations and appeal, urging affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

Regarding the procedural matters that the claimant did not receive a response to his request to subpoena three witnesses (one of whom did in fact testify) and that the carrier failed to answer his interrogatories, the claimant did not mention this at the CCH or seek a ruling or comment from the hearing officer. Section 410.203 provides that the Appeals Panel is to consider the record developed at the CCH. The claimant did not preserve his objections for the record and we decline to consider them for the first time on appeal.

To greatly summarize the facts, the claimant, a lead salesperson at a chain appliance store, alleges that he sustained a low-back injury on (date of injury for Docket No. 1), while helping load a washing machine for delivery at the employer's (city 1) store. Although timely notice on reporting was not an issue, there was considerable discussion whether and when the claimant reported his injury, whether it complied with the employer's policy, and whether the claimant was, or was not, familiar with the policy. In any event, the claimant continued working without seeking medical attention. A few days later the claimant requested and received a transfer to another of the employer's stores in (city 2). The claimant alleges a second low back injury, or aggravation, on

(date of injury for Docket No. 2), that occurred while helping to carry and set up a television set in a customer's home. Again there is some dispute about the reporting procedure, however, in evidence is a typewritten note dated May 14, 2001, giving written notice of both alleged injuries. It is relatively undisputed that the claimant resigned his position on May 15, 2001, came by the (city 2) store on May 16, 2001, said goodbye and moved to (state) where his parents and a minor child lived. The claimant first sought medical attention for his alleged injuries on May 30, 2001. Subsequently, an MRI performed on June 20, 2001, indicated a left paracentral disc herniation at L5-S1 "causing mild displacement of the traversing left S1 nerve root."

The claimant's appeal basically gives his version of the events in considerable detail adding some facts not brought out at the CCH. The claimant asserts that the hearing officer "chose to rely on a few written statements on behalf of the Insurer and the Employer" who were not present, under oath, or subject to cross-examination. Section 410.165(b) provides that the hearing officer may accept a written statement signed by a witness and in any event the claimant did not object to the admission of those statements at the CCH and consequently any objection was not preserved for appeal.

The question of whether the claimant sustained a compensable injury is a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decisions and orders are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge