APPEAL NO. 991240

Following a contested case hearing (CCH) held in (city 1), Texas, on May 20, 1999, 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 determining that the respondent (claimant) sustained a compensable repetitive trauma injury to her right arm; that the date of injury is _____; that the appellant (carrier) is not relieved of liability because claimant provided timely notice to the employer of the injury; that the carrier did not waive the right to contest the compensability of the claimed injury because it timely disputed the claim within 60 days of receiving first written notice; and that claimant had disability resulting from the compensable injury from August 7, 1998, through April 6, 1999. The carrier has appealed for evidentiary insufficiency the hearing officer's findings of fact and conclusions of law concerning the compensable injury, date of injury, timely notice, and disability determinations. Claimant asserts in response that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

Claimant testified that before moving to city 1 in April 1998, she had worked as a housekeeper for (employer) at a hotel in (city 2) (state 1) for about three years; that about eight to nine months before moving to city 1, she developed pain in her right arm, sought medical treatment and missed some time from work; and that when she returned to work, she was given lighter duty, apparently fewer rooms to clean, and her symptoms subsided. She indicated that after moving to city 1, she again commenced working for the employer, apparently in April 1998, as a housekeeper; that she worked five to six days per week, cleaning 20 to 28 hotel rooms; that her work was heavier, apparently because she was cleaning more rooms than previously; that the carts containing the linens, towels, and cleaning materials were heavy; that the carts were jammed into the cart room and she sometimes had to lift and pull to get her cart out; and that it was difficult moving the carts on and off the elevators and pushing them up and down the halls because of their weight. Claimant further testified that in approximately mid-_____, she experienced the return of pain in her right arm and that she started wearing a wrist brace on her right wrist and later that month told her manager, Mr. D, that her right arm was hurting from her work. She said that Mr. D told her he had previously had elbow tendinitis and suggested that she also wear an elbow brace. Claimant further stated that she began missing work around August 1, 1998, because of her arm; that in August she began to receive chiropractic treatment from Dr. A, who has since determined that she reached maximum medical improvement (on April 6, 1999); and that she is presently being taught how to perform some general clerical duties and some work in the workers' compensation field by her cousin, Mr. W. Mr. W testified that after claimant commenced employment in city 1, he often gave claimant a ride home from work; that sometime in _____ he learned from her about her right arm problems; and that he told her then to report it to her manager and seek medical attention. Dr. A's records, which indicate the diagnosis of cervical

radiculitis and carpal tunnel syndrome, contain his off-work slips for claimant from August 7, 1998, through February 21, 1999.

Mr. D testified that the conversation with claimant about her right arm pain and the wearing of an elbow brace took place on July 13, 1998, when she returned to work after having been off for three weeks, that claimant had said she had been traveling and that carrying her luggage strained her elbow, and that he did not learn that she contended her right arm injury was due to her work until the employer received a statement from her chiropractor sometime in August 1998. He agreed that the housekeeper's carts were heavy and did not disagree that claimant has a right arm injury but rather disagrees on the cause of it. Mr. D also stated that before claimant was hired, he called the manager of the hotel where she had previously worked and was advised that she was a good employee.

The carrier challenges findings that claimant sustained a repetitive trauma injury to her right arm (including her elbow and wrist) while in the course and scope of her employment; that she knew or should have known that her injury may be work related on _____; that she reported her injury to her supervisor not later than May 29, 1998; that she trivialized the injury and did not seek medical attention until August 6, 1998; and that she was unable to obtain and retain employment at wages equivalent to her preinjury wage from August 7, 1998, through April 6, 1999.

Claimant had the burden to prove that she sustained the claimed injury as well as the date of the injury, that she provided the employer with notice of the injury which was timely under Section 409.001, and that she had disability as that term is defined in Section 401.011(16). 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Tommy W. Lueders
Appeals Judge