APPEAL NO. 000993

Following a contested case hearing held on April 4, 2000, 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 appellant (claimant) did not sustain a compensable neck, back, and bilateral shoulder injury on either _____or _____, through either repetitive trauma or a specific incident at work, and did not have disability. Claimant appeals these determinations, urging the sufficiency of her evidence. The respondent (carrier) contends that the evidence is sufficient to support the challenged factual findings and legal conclusions.

DECISION

Affirmed.

The parties stipulated that on _____, claimant was the employee of (employer). The hearing officer's Decision and Order contains an extensive and thorough recitation of the evidence with which neither party takes issue. Accordingly, only so much of the evidence will be set out in this decision as is necessary to explain the decision.

Claimant testified that on _____, while working for the employer as a sorter and special driver, she sustained a repetitive trauma injury to her neck, back, and both shoulders. She stated that she worked five-hour shifts as a sorter which involved taking packages of varying weights off a conveyor belt at a junction and placing them on one or the other of two conveyor belts, depending upon their location. She indicated that this work is extremely fast-paced, handling approximately one package per second. The packages weighed from as little as one pound to more than 100 pounds and claimant indicated that while the packages with the address labels facing up could simply be slid off one conveyor belt and onto another, the other packages had to be turned over to read the labels and that this involved lifting. Claimant also indicated that she made deliveries one day a week and that this work also involved lifting packages. Claimant said that in late June 1999 she noticed her neck, back, and shoulder problems gradually coming on. She contended she sustained a repetitive trauma injury with an injury date of _____, and that she related her injuries to her work when she sought medical treatment on July 21, 1999, from Dr. A, a chiropractor, who took her off work for two days and later in August took her off work again. Claimant conceded that when she called Ms. T, the employer's office manager, from Dr. A's office, Ms. T asked her if her problems were work related and that she responded, "Well, I don't know, I'm at the doctor's office right now." She said she was in a lot of pain at that time. Ms. T testified that when she asked claimant if she had done it at work, claimant responded, "No, it's just [my] body getting old."

Mr. C, the employer's on-road supervisor, testified that claimant was off work on July 21 and 22, 1999, attending her daughter's softball tournament; that she had not obtained permission to be off on July 22nd; and that when he had a talk with her about this absence when she returned to work, she never mentioned an injury and worked her complete shift.

He also said that claimant first reported her injury date as _____, an employer's holiday, later changed it to July 6th, and told him "she felt something" on that date.

As mentioned, the hearing officer determined that claimant did not sustain an injury at work on either _____ or _____, by either repetitive traumatic activities or by a specific incident, and, accordingly, that she did not have disability.

The hearing officer states in his recitation of the evidence, that he was not persuaded by claimant's testimony or by the medical evidence that claimant sustained a compensable injury as she claimed, noting that "[t]here were too many inconsistences in Claimant's claim to meet her burden of proof." The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). 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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge