

APPEAL NOS. 001762
AND 002019

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 12, 2000; May 25, 2000; and June 15, 2000. The record closed on June 15, 2000. The hearing officer concluded that _____, was the date of injury for the occupational disease injury; that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease while working for the employer because she did not timely report her injury to the employer; that no good cause exists under the 1989 Act for the claimant's failure to timely report the claimed injury; that the claimant did not have disability; and that on July 16, 1999, the claimant did not sustain a compensable injury. The claimant has appealed these conclusions and certain underlying factual findings, asserting that because she established that the date of her occupational disease injury was _____, her report of such injury was timely, and that the evidence did establish that she sustained a specific injury on _____. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that she was employed by the employer as a workers' compensation claims adjuster and she detailed the myriad duties she performed with her hands and arms in that capacity. Not appealed is the finding that the repetitive trauma occupational disease claimed by the claimant was a result of the repetitive job duties she performed for the employer.

The claimant stated that while she has had problems with her wrists off and on for "quite a while" and had even filed a workers' compensation claim for carpal tunnel syndrome (CTS) against a former employer, a claim she did not pursue, she began having symptoms again between May 27 and 29, 1999; that she thought the symptoms would decrease but instead they increased; and that by _____, the pain had "become intolerable" and she told the claims manager, Ms. A, on that date that she was having problems with her elbows and wrists. She commented that she did not follow up with Ms. A both because she did not think she needed to and because she did not want to lose her job and "was careful what [she] said." As she put it, "workers' comp adjusters don't like to file claims."

The claimant further testified that on _____, she was returning two boxes of closed files to a school district office and that as she tried to close the car door with her right elbow while carrying one of the boxes, she slipped off the curb and fell against the car injuring her left shoulder, both knees, and her low back. She indicated that she had previously had problems with her left shoulder and was presently drawing VA disability benefits for a left knee injury sustained while in the Army. The medical records reflect that the claimant has

had multiple operations on the knee. The claimant also conceded having failed to disclose on her employment application with the employer that she had worked for a temporary employment agency doing adjusting work for another company, indicating that it was the latter company against whom she had filed a workers' compensation claim for injuries to both wrists and elbows.

The claimant at one point admitted knowing in May 1999 that her bilateral upper extremity symptoms were related to her work but said she did not earlier report the injuries to the employer because she had heard a company vice-president comment about how such claims could be defeated. She conceded having seen Dr. H in April 1999 with complaints about her upper extremities and stated, "No, I didn't [file a comp claim within 30 days]. I wanted to keep my job, which, as you can see by filing, I did not." At another point in the hearing the claimant said she was tired and confused when she gave this testimony and that it was "incorrect." Dr. H's _____, record states that the claimant is having new problems with her arms, especially the elbows, and that "[w]hen using her arms a lot with keyboarding, etc. she has tingling and numbness" and that she uses splints which help.

In her affidavit, Ms. M, the claimant's immediate supervisor, stated that on July 19, 1999, she and Ms. A conducted a lengthy telephone conference with the claimant reviewing the latter's job performance deficiencies. Ms. M further stated that on July 21, 1999, the claimant called her and said she was having problems with her wrists and elbows; that this was the first indication or report from the claimant to her regarding any alleged workers' compensation claim; and that the claimant also reported at that time a second work-related injury of _____. In her affidavit, Ms. A stated that the claimant did not earlier report her claimed injury to her and that she first learned of the claimant's contention after the claimant had called Ms. M

The claimant stated that she continued working until October 6, 1999; that she underwent surgery on her right wrist in May 2000; and that she seeks disability for the _____, occupational disease injury which she said consists of CTS, cubital tunnel syndrome, and pronator syndrome which she described as another entrapped nerve in her arm. She said she does not seek disability for the _____, injury.

The claimant had the burden to prove by a preponderance of the evidence that she sustained an occupational disease injury on _____; that she timely reported that injury to the employer or had good cause for not doing so; that she had disability (as that term is defined in Section 401.011(16)) from the occupational disease injury; and that she sustained a compensable accidental injury on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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. The same can be said as well for the issues of the date of the claimed injury and of the provision of timely notice to the employer. 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 hearing officer could consider the conflicts in the evidence and the inconsistencies in the claimant's testimony and determine that the claimant's evidence was not persuasive.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge