

APPEAL NO. 001923

Following a contested case hearing held on July 19, 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 injury to her right wrist and right shoulder on _____, and that, because she did not sustain a compensable injury, she did not have disability. The claimant has appealed, asserting that the hearing officer's determinations are against the great weight of the evidence. The respondent (carrier) urges the sufficiency of the evidence to support the hearing officer's determinations.

DECISION

Affirmed.

The claimant testified that on _____, the day she commenced employment with the employer as an aide in an assisted living facility, she slipped on ice in the parking lot and injured her left knee; that she returned to work at light duty on May 16, 1999; and that her light-duty assignment was working in the facility's laundry room. She further stated that during the approximate period of July 9 and 10, 1999, she got behind in getting wet sheets and other laundry out of the commercial washers and that her right shoulder hurt from this activity; that on _____, she felt pain in her right wrist which shot up her arm as she shook a dry sheet prior to folding it; and that she did not report this injury to the employer at that time because she had to leave for her work hardening session for her left knee. The claimant said that she did report the injury at her work hardening session and "let them know" she could not do the upper body work because she had hurt her wrist. The July 14, 1999, report of Ms. F, an occupational therapist at (rehab center), states that on _____, the claimant was able to perform certain upper body work including lifting from the waist to the shoulders and from the shoulders overhead and that she did not report any difficulty with her wrist during that session. Ms. F also wrote that the claimant's "right shoulder complaints have been ongoing since initial evaluation from long standing condition." The claimant also said she reported the injury to the employer the next day. The accident report the claimant signed on July 14, 1999, states "was folding large sheet and hurt my right wrist."

The claimant further testified that after seeing different doctors at (clinic), the facility used by the employer, she began chiropractic treatment with Dr. G in August 1999 and that he took her off work. Dr. G's August 25, 1999, report states that the claimant "sustained a strain of the AC joint and an impingement of the right shoulder and a right wrist strain (possible carpal tunnel)." The claimant said she has also been seen by Dr. B and numerous other referral doctors and that all of these doctors have had difficulty diagnosing her and felt she had right carpal tunnel syndrome (CTS). However, she said that Dr. M performed an EMG which determined that she did not have CTS and that he thinks she has a pinched nerve in the area of her neck and shoulder.

Dr. M's March 30, 2000, report states that the claimant's nerve conduction study of the right upper extremity is essentially normal and that the EMG examination shows no evidence of CTS but "is suggestive of right C8 radiculopathy with evidence of active denervation along the cervical paraspinal muscles." The claimant stated that her right shoulder pain resolved and that her shoulder is "just fine" but that her right wrist pain has persisted. Dr. MB wrote on April 12, 2000, that the claimant has "clinical findings of C-8 radiculopathy on the right which is consistent with cervical radiculopathy" and that he believes "the correct diagnosis now is cervical radiculopathy." Dr. V, wrote on May 22, 2000, that his impression is that the claimant has sustained a repetitive occupational injury of her right wrist and hand and that his diagnosis is closed dislocation of the wrist, CTS, closed dislocation of the elbow, and lesion of the ulnar nerve.

In addition to the dispositive conclusions of law, the claimant challenges factual findings that at some unknown time prior to _____, she sustained some injury or medical condition to her right shoulder that was not related to nor caused by her employment; that on _____, the claimant did not sustain an injury to her right shoulder that arose out of or was in the course and scope of her employment with the employer; that on _____, the claimant did not sustain the injury of CTS by a single traumatic incident to her right wrist and that at no time in 1999 did she suffer CTS as an injury or occupational disease; that there is insufficient medical evidence to show that the claimant sustained a neck injury on or about July 13, 2000; and that due to the pain in her right upper extremity, the claimant was not able, for the period of July 15 through December 15, 1999, to obtain and retain employment at a wage equivalent to her wage before _____.

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 hearing officer explains in his discussion of the evidence that he is unable to

determine from the evidence just what the alleged injury actually was. The claimant argues that she should not be penalized because of the difficulty in diagnosing the nature of her injuries. However, we perceive no error here as it was the claimant's burden to prove that her work caused damage or harm to the physical structure of her body and the hearing officer should not have to speculate as to what parts of her body were injured at work and the nature of such injuries.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge