

APPEAL NO. 002016

A contested case hearing was held on July 28, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), to resolve the following disputed issue: "Did the Claimant sustain a compensable injury on _____." The hearing officer, resolved the disputed issue by finding, among other things, that x-rays taken on April 13, 2000, revealed a 2mm diameter radial styloid avulsed fracture fragment and that on _____, the respondent (claimant) "sustained an injury to her left wrist forearm in the course and scope of her employment," and by concluding that the claimant sustained a compensable injury on _____. In its appeal the appellant (self-insured) complains that hearing officer failed to state in the dispositive conclusion of law whether the avulsion fracture is part of the compensable injury. The self-insured requests that we remand the case for the hearing officer to "make a Conclusion of Law regarding whether or not the avulsion fracture is part of the compensable injury" and also to state "what the compensable injury of _____, is and the cause of that condition; namely, it is a repetitive trauma condition or is it an injury that occurred at a specific time, place, and cause." The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that her usual duties as a media clerk at a school include replacing books on the library shelf; that on _____ (all dates are in 2000 unless otherwise stated), she was assigned a special project to inventory all the library books; that this job entailed pulling the books off the shelf to check the labels on the rear and replacing the books; that it took her between three and four hours to complete the project which she worked at steadily so as to finish the project before students arrived for a test; and that she began to experience left wrist pain before completing the project. She further stated that by the time she had finished the job, her left wrist was red and very painful. Her written statement of April 13 states that her wrist had a knot on it and was red, swollen, and very painful. The contemporaneous written statement of coworker Ms. D states that she observed the claimant working in the library on _____ and saw that she had to pull some of the books out "with force" because the shelves were full and the books very tight. The carrier stated in closing argument that it accepted the claimant's description of her activities in the library on _____.

The claimant further testified that the next morning, she could barely move her left wrist and that she sought medical treatment from Dr. M. In his Initial Medical Report (TWCC-61) reflecting the claimant's April 13 visit, Dr. M stated the diagnosis as strained wrist and "cellulitis left wrist/forearm." In a "Subsequent Exam" record of May 11 Dr. M added the diagnosis of left radius fracture. The April 19 report of Dr. C, a radiologist, states that films demonstrate a 2mm diameter bony chip relating to the radial styloid and he stated the impression as a "2mm diameter radial styloid avulsed fracture fragment but no significant further abnormality."

Dr. P, an orthopedic surgeon and hand specialist, testified that he reviewed the claimant's medical records, including the radiologist's report, but did not examine the claimant nor see the films. He further stated that in his medical opinion, the activities the claimant described doing on _____ neither caused the fracture nor aggravated the fracture because there was not sufficient trauma to the bone to result in the fracture. Dr. P further testified that the term "avulsed fracture" meant that the tip of the bone was pulled away; that it is "possible" to have a small fracture such as the claimant had that goes unnoticed; that the activities the claimant described could cause or aggravate a soft tissue injury; and that according to her medical records the claimant did have "problems" with her wrist following her activities on _____. Asked directly on cross-examination if she was seeking medical benefits for the diagnosed fracture, the claimant responded in the affirmative.

Not appealed are findings that the claimant has worked for the self-insured for 12 years, initially as a teacher's assistant and more recently (last two years) as a media clerk; that on _____ she was assigned to perform an inventory on the books at the school library; that on _____ she worked non-stop for a period of three to four hours, pulling books off the shelves, checking for labels, and replacing the books in the correct order; that she had experienced pain and aches in her wrist in the past but not to the extent that she experienced on April 12; that on April 13 her condition was diagnosed as strained wrist and cellulitis left wrist/forearm; and that on April 13 x-rays revealed a 2mm diameter radial styloid avulsed fracture fragment.

In addition to the dispositive conclusion of law, the self-insured disputes findings that after concluding the inventory of books (on _____) the claimant's left wrist was swollen, red, and very painful, and that "[o]n _____, the claimant sustained an injury to her left wrist forearm in the course and scope of her employment."

The claimant had the burden to prove that she sustained the claimed injury. 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. 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).

We find no merit in the carrier's contention that the hearing officer should have made findings which detailed the nature of the left wrist injury, i.e. soft tissue only, soft tissue and avulsed fracture, and so on, and which also determined whether the left wrist injury resulted from a specific trauma or from repetitive trauma and we decline the carrier's request that we reverse and remand for such findings. If the carrier wanted to attempt to avoid liability for the avulsed fracture, which is apparently what it was trying to do at the hearing, it should have sought to add a disputed issue concerning whether the claimant's left wrist injury included the avulsed fracture. The framed issue from the benefit review conference was as stated above and the hearing officer's conclusion of law, adequately supported by findings of fact, resolves that issue.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge