

APPEAL NO. 002258

Following a contested case hearing held on September 14, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant's (claimant) compensable bilateral wrist injury of _____, does not extend to her upper back. The claimant has requested our review. The respondent (carrier) asserts that the claimant's appeal has not invoked the jurisdiction of the Appeals Panel because the claimant failed to serve a copy on the carrier; that the claimant's appeal is insufficient to constitute a request for review; and that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

Concerning the carrier's contention that the claimant's failure to serve a copy of her appeal on the carrier resulted in the Appeals Panel not having jurisdiction over the appeal, the Appeals Panel determined, at least as long ago as Texas Workers' Compensation Commission Appeal No. 91120, decided March 30, 1992, that a claimant's failure to serve a copy of the appeal on the carrier does not affect the timeliness of the appeal but simply extends the time for filing a response until service is made. Further, judging the claimant's request for review as a whole, we do not find it so deficient, considering the provisions of Section 410.202, as to render it inadequate for the purpose of perfecting an appeal. See Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992, where the Appeals Panel observed that a request for appeal need not meet the technical niceties of appellate court rules. Further, the Appeals Panel has held that a general appeal is sufficient and will be interpreted as challenging the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992.

The parties stipulated that on _____, the claimant sustained a compensable injury to her bilateral wrists. The claimant testified that she has worked for her major airline employer for four and one-half years making reservations and that her work required her to be typing constantly during her eight-hour shifts plus some overtime. She further stated that on June 21, 1999, she cut her finger and at first believed that her physical problems began with this event; and that her problems with her upper back began on _____, the date she could no longer take the pain. The claimant said that the carrier accepted her bilateral carpal tunnel syndrome injury (CTS) and has paid for treatment including carpal tunnel surgery in November and December 1999 by Dr. T. Her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), signed on March 14, 2000, states that she cut a finger on a waste disposal can and that she had repetitive trauma, and back spasm.

The January 26, 2000, initial report of Dr. N states that the claimant's neck and upper back pain came on due to disuse of both wrists and altered body mechanics due to the bilateral CTS injury; that secondary pain syndromes can occur from a primary pain syndrome like CTS; and that he feels that the back problems could be produced from carpal tunnel problems with ulnar and median nerve compression which can create symptoms going into the back. Dr. N reported on June 14, 2000, that NCS/EP studies of the upper extremities were consistent with bilateral CTS and revealed no evidence of cervical radiculopathy, other mononeuropathy in the upper extremities, or peripheral neuropathy.

The June 28, 2000, report of Dr. H states that the claimant was referred by Dr. N for an examination; that the claimant has been seeing Dr. N three times a week for eight weeks for chiropractic treatment; and that the claimant complains that her pain returns once she leaves Dr. N's office. According to Dr. H, his EMG exam revealed no acute or chronic denervation potential of the upper extremities or thoracic paraspinal muscles and there is no electrodiagnostic evidence of thoracic radiculopathy or axonal or muscle denervation at the upper extremities. Dr. H's diagnosis was acute thoracic myofascial pain syndrome and clinical chronic CTS.

The hearing officer found that on _____, the claimant did not injure her upper back while at work for the employer and concluded that her bilateral wrist injury does not extend to her upper back. In her discussion of the evidence, the hearing officer mentioned the results of the June 14, 2000, NCS/EP studies and commented that the claimant has failed to establish by a preponderance of the credible evidence that her _____, compensable injury extended to her upper back.

The claimant had the burden to prove by a preponderance of the evidence that she sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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). Despite the fact that the claimant's medical records reflect her complaints of upper back pain since _____, the hearing officer could conclude that her evidence failed to establish that she had an upper back injury which was caused by her work or was part and parcel of her bilateral CTS injury. Mere pain is not compensable under the workers' compensation statute. Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge