APPEAL NO. 002408

Following a contested case hearing held in Dallas, Texas, on August 24, 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 in the form of an occupational disease and that the claimant did not have disability resulting from the claimed injury. The claimant appealed, asserting that the hearing officer's determinations were against the great weight and preponderance of the evidence. The respondent (carrier) responded that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked as a customer assistance representative for (employer). Her job involved answering telephone inquiries regarding USPS Express Mail shipments. In the course of her employment, she would talk to customers on the phone and input information into a computer terminal in order to track the status of mail. The claimant presented evidence at the hearing that she experienced the sudden onset of numbness and sharp pains in her hands and pain in her wrists, arms, neck, shoulders, and back on _____. She testified that she believed that the pain would go away, and that it would diminish somewhat during periods when she was not keying information into the computer, but that the pain had increased to the point that she felt the need for medical treatment. The claimant reported the claimed injury to her employer on October 18, 1999, and has not worked since that day. The claimant asserts that she has sustained bilateral carpal tunnel syndrome (CTS) as a result of her employment and that her inability to work since October 19, 1999, is a result of that injury.

In support of her contention that she has sustained a compensable on the job carpal tunnel injury, the claimant offered medical evidence, particularly reports from her treating doctor, Dr. Z. Dr. Z has diagnosed bilateral carpal tunnel and, in a letter dated June 2, 2000, stated:

> I have reviewed [the claimant's] medical chart from this office and also have a copy of the physician's evaluation of [the claimant] by [Dr. B] in October 1996.
>
> [The claimant] had [CTS] in October of 1996 when she came to this office to see me in October 1999, she filled out a form stating her date of injury was _____.
>
> With the above facts, I would have to assume that the [CTS] [the claimant] complained of when I treated her in October 1999 through January 2000 was the result of her work in October 1999.

Dr. Z's diagnosis of the claimant's condition is in apparent conflict with the findings of Dr. O. Dr. Z had referred the claimant to Dr. O for electrodiagnostic studies. On November 18, 1999, the claimant underwent motor nerve conduction, F-Wave, sensory nerve conduction, and needle EMG examinations by Dr. O. In her report, Dr. O stated that she found a mild slowing of the ulnar nerve conduction across the right elbow, but that finding did not explain the claimant's painful paresthesias in the bilateral forearms. No denervation in a radicular pattern or evidence of CTS was seen in the studies. Dr. O did not voice an opinion on the cause of the claimant's nonspecific upper extremity symptoms.

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.)). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer could find that the nerve conduction studies, EMG, and other objective studies were more credible than Dr. Z's diagnosis of bilateral carpal tunnel. Without the existence of a compensable injury, there can be no finding of disability. 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 decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge