

APPEAL NO. 002544

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 16, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury in the form of an occupational disease; whether the respondent (carrier) had waived the right to dispute the compensability of the claimed injury; the date of the injury; and, whether the claimant had disability as a result of the compensable injury.

The hearing officer found that the claimant did not sustain an injury to her right wrist on _____, due to repetitive trauma; that the date of injury was _____; that the claimant did not have disability; and that the carrier had not waived the right to dispute the compensability of the claimed injury.

The claimant appealed only the adverse determinations concerning the compensability of the injury and carrier waiver, contending that the determination as to compensability was against the great weight and preponderance of the evidence and that, as a matter of law, the carrier waived the right to dispute compensability because it had not done so within seven days of receiving written notice of the claimant's injury. The carrier filed a response, urging that the decision and order be affirmed.

DECISION

Affirmed.

The evidence was sufficient to support the hearing officer's determination that the claimant did not sustain a repetitive trauma injury to her right wrist in the course and scope of employment. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Although there was no finding by the hearing officer as to a date of receipt of written notice of the injury by the carrier, the hearing officer did enter a finding that the carrier filed a dispute with the Texas Workers' Compensation Commission on April 28, 2000, which would have been within 60 days of the date of injury found by the hearing officer of _____. These findings were not appealed and have become final. Section 410.169. The claimant contended that Downs v. Continental Casualty Ins. Co., No. 04-99-00111-CV, 2000 WL 72141 (Tex. App.-San Antonio) was controlling. We decline to follow Downs as it has not become final and based upon consultation with the Office of the Attorney General "the Commission understands that the August 16th decision in the Downs case

should not be considered precedent at least until it becomes final upon completion of the judicial process.” Texas Workers’ Compensation Commission Advisory 2000-7, August 28, 2000.

We affirm the hearing officer’s decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge