

## APPEAL NO. 002696

Following a contested case hearing held on October 27, 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 (claimant) had not sustained a compensable injury in the form of an occupational disease as a result of her employment and that the claimant did not have disability. The claimant appealed, asserting that the hearing officer's decision is against the great weight of the evidence. The respondent (carrier) responded that the hearing officer's decision is supported by the evidence and should be affirmed.

### DECISION

Affirmed.

The claimant alleged that she had sustained a bilateral carpal tunnel injury as a result of her duties for the hospital employer. The claimant was employed as a "pedi-tech" for the hospital and was involved in starting IVs and drawing blood from pediatric patients. The claimant presented evidence from her treating doctor, Dr. C, a chiropractor, that the claimant sustained a bilateral carpal tunnel injury and that the cause of the injury was the overuse of the claimant's hands and arms in the performance of her job.

The carrier presented controverting evidence from Dr. L, a medical doctor, which indicated that the carpal tunnel syndrome diagnosis was suspect because the claimant's pain behaviors were inconsistent with expected responses to three different tests which would normally be indicative of carpal tunnel syndrome: Phalen's test, Tinel's test, and Finkelstein's test. Dr. L opined that the claimant exhibited evidence of symptom magnification. The carrier also presented a peer review which opined that the claimant's job description is not one which would be likely to cause a carpal tunnel injury. The medical evidence was in conflict.

The claimant had the burden to prove that she sustained the claimed occupational disease injury in the course and scope of her employment 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 disputed issues of injury and disability can, generally, be established by the 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.)). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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's decision and order are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge