

APPEAL NO. 002874

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 3 and November 28, 2000, a hearing was held. The hearing officer decided that the appellant (self-insured employer) is not entitled to a reduction of the respondent's (claimant) impairment and/or supplemental income benefits based on contribution from an earlier compensable injury and that the claimant did not have good cause for his failure to appear at the hearing on October 3, 2000. The self-insured employer appeals the determination of the contribution issue. The file does not contain a response.

DECISION

Affirmed.

It was not error to decide that the self-insured employer is not entitled to contribution towards the claimant's _____, compensable neck injury from the impairment assigned for the claimant's _____, neck injury. The 16% impairment rating (IR) assigned for the claimant's more recent low back and neck injury included no rating for abnormal cervical range of motion (ROM); whereas, the six percent IR assigned for the earlier injury to the claimant's neck was exclusively for abnormal cervical ROM. Hence, there was no cumulative effect of the early IR on the current IR. See Section 408.084(b).

The self-insured employer had the burden of proof on the appealed issue. 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 a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge