

APPEAL NO. 002881

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 29, 2000. The hearing officer found that the respondent (claimant) had sustained a new injury to her right arm on _____, and that she had disability from March 31, 2000, to May 28, 2000.

The appellant (carrier) appealed, pointing to inconsistencies in the claimant's testimony and conflicting medical evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a specific right arm injury (not at issue here) in _____ with Dr. C as the treating doctor. The claimant changed jobs and began working as a data entry operator in April 1999. In September 1999, the claimant again experienced right arm pain and attributed it to the _____ injury. Around March 10, 2000, the claimant again had right arm pain and returned to Dr. C, who sent the claimant to Dr. P for testing. EMG testing by Dr. P had the impression of right carpal tunnel syndrome. In a report dated March 22, 2000, Dr. C states that the claimant's current complaints are not secondary to the _____ injury. A peer review doctor is of a different opinion. The claimant's current treating doctor took the claimant off work on March 31, 2000, and the claimant returned to work on May 29, 2000.

Contrary to the carrier's assertion, the hearing officer's Statement of the Evidence accurately sets out the testimony and evidence. While there was conflicting and contradictory evidence, 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 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge