

APPEAL NO. 002947

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a hearing held on December 5, 2000. The hearing officer resolved the sole disputed issue by determining that the appellant (claimant) did not sustain an injury to her neck in addition to the low back injury (accepted by the respondent (carrier)). The claimant appeals on evidentiary sufficiency grounds while the carrier urges in response the sufficiency of the evidence to support the decision.

DECISION

Affirmed.

While another hearing officer may have drawn different inferences from the evidence, the hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to and include her neck. While claimant's contention to the contrary was supported by her treating doctor, Dr. M, and the surgeon who performed a lumbar spine fusion at the L5-S1 level, Dr. W, the hearing officer could consider not only the interval between the date of injury and the claimant's reporting of neck pain but also the opinion of the carrier's doctor, Dr. S, who examined the claimant and opined that her underlying spondylosis does not appear to be related to her _____, lifting injury at work.

The claimant had the burden to prove that she sustained the claimed injury. 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 challenged factual finding 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:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge