

APPEAL NO. 010582

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 March 6, 2001. In response to the issue before him, the hearing officer determined that the appellant's (claimant) compensable bilateral hand and wrist injury of _____, "does not extend to nor include multi-level degenerative disc disease and joint disease in the Claimant's cervical spine, with focal spinal canal stenosis at the C4-5 intervertebral level."

The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer incorrectly gave greater weight to lack of notification of an injury than to "actual medical findings." The claimant lists factors that the Appeals Panel has considered in determining the great weight of the evidence is contrary to the hearing officer's factual determination. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a custodian in one of the self-insured's facilities and, on _____, she tripped over a student's leg, falling forward to the floor with her arms extended. The parties stipulated that the claimant sustained a compensable injury to her hands and wrists in that fall and that she reached maximum medical improvement for that injury on July 10, 2000. The claimant consulted her family doctor, Dr. G, on March 24, 1998, and Dr. G subsequently referred the claimant to Dr. S, an orthopedic hand specialist. Dr. S performed surgery on the claimant's left wrist in December 1998 and on her right wrist in October 1999. The claimant continued to treat with Dr. S from June 1998 to February 2000. During this period of time, the claimant saw a number of doctors for evaluation and for other matters, including Dr. N on October 17, 1999, for chest pain. In a very thorough overall physical, Dr. N specifically noted the claimant's neck was "supple." At least five doctors examined and evaluated the claimant between June 1998 and April 2000 and none noted any neck or cervical complaints, although the claimant testified that she did complain to Dr. S about her neck.

The claimant was referred to Dr. B, a chiropractic neurologist, by her attorney. Dr. B, in a number of reports and testimony at the CCH, attributes the claimant's multi-level degenerative disc disease and cervical spinal stenosis to her compensable injury of _____. At least two doctors disagree with Dr. B's opinion on causation of whatever degenerative disc disease the claimant may have.

The evidence is obviously in conflict. 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:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge