

APPEAL NO. 010701

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 February 5, 2001. With regard to the five issues before her, the hearing officer determined that: (1) the appellant (claimant) had not sustained a (new) compensable injury; (2) the date of the alleged injury was _____; (3) the claimant did not timely report her alleged injury to the employer and did not have good cause for failing to do so; (4) the claimant did not make an election of remedies by using her group health insurance; and (5) the claimant does not have disability. The hearing officer's decision on the election of remedies issue and the alleged date of injury have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the injury, notice, and disability issues, reiterating her testimony and citing medical evidence which supports her position. The file does not contain a response by the respondent (carrier).

DECISION

Affirmed.

The claimant was employed as a "membership consultant" (customer service representative) answering telephone calls and inputting information in a computer. It is undisputed that the claimant had sustained a compensable right wrist carpal tunnel syndrome (CTS) injury in _____ and had CTS release surgery on July 30, 1996. Whether that injury resolved or not is disputed; although, the claimant, even in her appeal, agrees that she "had some pain in November & December of 1999 . . . a few times" The claimant testified that on _____, she had a sudden onset of severe pain in her right hand. A coworker corroborated the claimant's testimony by stating that the claimant was crying at her desk on that date. The claimant testified that she told her supervisor, Ms. S, about the injury. Exactly what was said is disputed and even the date of the incident is subject to dispute. The claimant testified that she sought medical care the same day that she felt the onset of pain from Dr. G, the claimant's treating doctor from her _____ injury; however, Dr. G's first report after _____, is March 13, 2000. Dr. G's reports of March 13, March 29, April 4, May 23, and July 7, 2000, all refer to the _____ injury and, in fact, the May 23 report states "This is not a new injury." Dr. G's subsequent reports of January 19 and March 5, 2001, indicate a new injury, or that the claimant "reinjured her wrist on _____ due to repetitive motion of typing." An EMG performed on September 13, 2000, was normal for both upper extremities.

The hearing officer, in her Statement of the Evidence, gives examples of contradictory or inconsistent testimony and documentary evidence and concluded that "[d]ue to the inconsistencies in Claimant's testimony, she was not credible." 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).

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury and had not given timely notice, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge