

APPEAL NO. 010732

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 5, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and because the claimant had no compensable injury, she had no disability. The claimant appeals and urges the reversal of the hearing officer's decision on sufficiency grounds. The respondent (carrier) responds, requesting that the hearing officer's decision be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease on _____. The claimant alleged that she sustained bilateral carpal tunnel syndrome (BCTS) as a result of her duties as a senior account specialist with her employer. The claimant testified that her duties included one hundred percent repetitive motion, including data entry and correction. Conversely, evidence introduced at the CCH, upon which the hearing officer could have relied to decide that the claimant sustained no compensable injury, included a statement from one of her coworkers claiming that the claimant's duties included far fewer repetitive tasks than those to which the claimant testified. In addition, the evidence adduced at the hearing showed that an investigator maintained surveillance on the claimant and took videotape footage of her at her sister's retail store having no "trouble" performing the types of tasks she now alleges she cannot perform because of her BCTS. The claimant testified that she only "visited" her sister there, sometimes for eight hours and sometimes for five days weekly. The carrier also introduced medical evidence purporting to refute the claimant's alleged diagnosis of BCTS.

The carrier also argued that, even if the claimant had BCTS or carpal tunnel syndrome in some other form, she failed in her burden to show a causal link between her injury, if any, and her employment. The hearing officer wrote that the claimant's testimony was "simply not persuasive."

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); 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.). This is equally true regarding medical evidence. Texas Employers Insurance Association v.

Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested 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. 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).

With no compensable injury found, there is no basis upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

For these reasons, the decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge