APPEAL NO. 010957
FILED JULY 24, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 12, 2001, the hearing officer resolved the disputed issues by determining that the date of the claimed injury is _____; that the appellant (claimant) did not sustain a compensable injury; that the claimant timely reported the claimed injury; and that she did not have disability. The claimant appeals the injury, date of injury, and disability determinations on sufficiency of the evidence grounds. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the date of the claimed injury was _____; that the claimant did not sustain a compensable injury as she claimed; and that she did not have disability. The claimant contended that on _____, she injured her right hand and her back while trying to pull the computer monitor forward on her desk; that this accident was witnessed by her immediate supervisor; and that she had disability resulting from this injury from January 6, 2000, until March 2000 when she became self-employed. The claimant conceded that soon after the claimed injury, she retired from the employer after more than 28 years of service. The supervisor's testimony substantially contradicted the claimant's testimony on the date of injury and occurrence of the injury issues. The carrier's "required medical examination" doctor reported on December 17, 2000, that the claimant had sustained "at most, a lumbar strain" and that it was "medically improbable" that she sustained a significant injury by moving a monitor in the manner she described without seeking medical attention for over three weeks. These disputed issues, for which the claimant bore the burden of proof, presented the hearing officer with questions of fact to resolve and it is the hearing officer who is the sole judge of the evidence and who resolves the conflicts and inconsistencies in the evidence. Section 410.165(a); Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We are satisfied that the challenged findings are not 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).

The claimant also asserts error in the hearing officer's not allowing her to use Dr. A "MRIs." However, while the record contains a report from Dr. A which discusses the revelations of an MRI, it does not reflect that the claimant offered MRI reports and that they were excluded from evidence. As for the claimant's further contention that the hearing officer erred in not allowing her to add an issue to the statement of disputed issues regarding the carrier's having waived its right to contest the compensability of her claimed injury, we find no abuse of discretion (Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986))

given the claimant's failure to follow the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge