

APPEAL NO. 011105  
FILED JUNE 28, 2001

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 April 17, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on \_\_\_\_\_; that the claimant does not have disability; and that the claimant had not timely notified her employer of her injury and did not have good cause for failing to do so.

The claimant appeals on the basis that the great weight of the evidence was contrary to the hearing officer's decision and alleges error as to the refusal of the hearing officer to issue a subpoena. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a department manager with a large retail chain store (employer) and sustained a neck and left arm injury in \_\_\_\_\_. The claimant treated with Dr. P; and, after missing a few weeks of work returned to work. The claimant testified that on \_\_\_\_\_, she felt pain in her left shoulder and neck moving some stock from a merchandise bin to a "buggy." Whether the claimant reported an injury or merely asked to go home because she did not feel well is in dispute. The claimant saw Dr. P for her injury on February 3, 2000, and Dr. P initially believed that her symptoms were related to the 1999 injury. The claimant testified that she returned to the employer's premises and completed the accident report on February 3, 2000. There is a dispute as to when the claimant completed an accident report. The employer's managers testified that the claimant said she was sick on \_\_\_\_\_, and that, thereafter, on February 3, 2000, the claimant requested and was granted sick leave. According to the claimant, she completed a second accident report on March 16, 2000. Only the March 16, 2000, accident report is in evidence. The medical evidence is also in conflict.

Regarding the issues of whether the claimant sustained a new injury, whether the claimant gave timely notice pursuant to Section 409.001, and whether the claimant has disability as defined in Section 401.011(16) are factual issues for the hearing officer to resolve. 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).

Although not admitted into evidence, and only mentioned in closing argument, the claims file does contain the claimant's request for a subpoena dated April 3, 2001, for the claimant's "entire personnel file" asserting that the personnel file could prove that the claimant had timely reported her injury. The claims file also includes the hearing officer's denial of the request dated April 16, 2001 (the day prior to the CCH), because "there is no good cause shown." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.12(c)(1)(B) (Rule 142.12(c)(1)(B)) provides that the request for the subpoena must identify the evidence to be produced and explain why it is relevant to the disputed issue. Rule 142.12(d) provides that the hearing officer may deny a request for a subpoena if the evidence can be obtained by other means. We reviewed the hearing officer's denial of the subpoena request on an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000. In this case, the request for the subpoena and its denial were not admitted into evidence nor was there evidence that the claimant had been denied permission to see her own personnel file. Accordingly, the hearing officer did not abuse his discretion in denying the claimant's request.

The hearing officer's decision and order are affirmed.

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Robert W. Potts  
Appeals Judge