

APPEAL NO. 011408
FILED JULY 26, 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 was held on June 6, 2001. The hearing officer determined that the appellant (claimant) did not sustain compensable injuries consisting of bilateral carpal tunnel syndrome, injuries to her right shoulder and right elbow, and an aggravation of a neck injury, and that the claimant did not have disability. The claimant has appealed these adverse determinations on sufficiency of the evidence grounds. The respondent (carrier) submitted a response, urging that the determinations of the hearing officer be affirmed.

DECISION

Affirmed.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). In this case, the hearing officer heard conflicting evidence concerning whether the claimant's work activities involved repetitive movements such as would cause the claimant's alleged injuries. Further, there were medical records in evidence which showed that the claimant was being treated for the same or similar complaints prior to the alleged date of injury. Lastly, an MRI from January 1999, was compared to an MRI done in February 2001, and interpreted as showing no significant interval change in the cervical spine. The hearing officer thus had ample evidence upon which she could base her determinations, and applying our standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge