APPEAL NO. 011580
FILED AUGUST 14, 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 June 15, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable (left upper extremity) injury on _____ (all dates are 2001), and that the claimant did not have disability.

The claimant appeals on a sufficiency of the evidence basis. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a machine attendant. It is relatively undisputed that on January 28 the claimant was directed to work at a different machine and that she was upset about the reassignment. The claimant testified that while working at the assigned machine she felt a "sudden pain to [her] left shoulder" and that "the pain goes down up to the elbow." The claimant testified that she reported the injury to the leadman (supervisor) on duty, Mr. GF. Mr. GF denied that the claimant reported an injury, but said that the claimant was complaining about her reassignment. The claimant completed her shift and came to work the following morning. What happened then is in dispute, but the parties seem to agree that there was a meeting with Ms. LF, the assistant supervisor and Mr. GF's supervisor. What was said is in dispute. During her meeting with Ms. LF the claimant apparently quit her job. At some point, the claimant did see the company nurse, who referred the claimant to Dr. R.

The claimant saw Dr. R on February 7, who, in a report, notes that the claimant does a lot of repetitive arm motions, and assesses a left shoulder and upper arm strain. Dr. R released the claimant to modified work duty with no lifting and no repetitive left arm motions. The claimant was subsequently referred to Dr. A, a chiropractor, by her attorney. Dr. A, in an undated report, recites that he saw the claimant on March 9 for an injury sustained when "she picked up a box" (it is unclear whether the claimant is alleging a discreet injury or a repetitive trauma injury or both). Dr. A took the claimant off work effective March 3.

As the claimant noted in closing argument at the CCH, this case involves an obvious "fact question." In such a case it is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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 who 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).

Because we are affirming the hearing officer's decision that the claimant did not have a compensable injury, 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:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge