

APPEAL NO. 011746
FILED SEPTEMBER 6, 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 July 9, 2001, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____, and that she did not have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds and also asserts error by the hearing officer in denying her request for a subpoena. The respondent (self-insured) urges in response that the evidence is sufficient to support the challenged determinations and that the hearing officer did not err in denying the request for a subpoena.

DECISION

Affirmed.

The claimant stated that she had worked as a bus driver for the self-insured since August 1990; that she drove van-sized special transit buses for mobility impaired passengers, commonly driving for approximately 12 hours per shift; and that on _____, after driving bus no. 449 for 12 hours, she developed back pain from the shaking and jarring. She also stated that bus no. 449 was one of the new buses delivered in mid-1999; that "all of them are the same," apparently referring to their shaking and jarring; and that other drivers, as well as passengers, complained about them. The claimant testified on cross-examination that she had a prior work-related back injury in August 1997 and that from time to time she would be seen at the emergency room for "flare-ups." She further stated that most of her other workers' compensation claims were for her neck and shoulders and that she only reported them because the self-insured required such reporting. Mr. N, the self-insured's lead upholsterer for 17 years, testified that he fixes all bus seats; that he inspected bus no. 449 after being advised of the claimant's complaint and found nothing out of the ordinary; that the seats on the buses which were delivered in August 1999 have adjustable, full-suspension systems; and that no repairs were necessary for bus no. 449.

The evidence was in conflict concerning whether the claimant sustained the claimed injury. While the extensive April 23, 2001, report of Dr. W, who was appointed by the Texas Workers' Compensation Commission to examine the claimant and opine on the cause of her claimed injury, does state that the claimant "probably" sustained a new injury on _____, Dr. W elsewhere in the report refers to only the "possibility" of the claimant's symptoms arising initially from long shifts sitting in a vehicle with stiff shock absorbers. Further, as the hearing officer notes, Dr. W repeatedly qualifies her opinion and states the difficulty of discerning whether the claimant actually had a new injury, given her prior injuries. Also, Dr. P reported on December 14, 2000, that it is very unlikely that the whole-body vibration of the duration, intensity, and frequency described by the claimant from driving these buses would cause an acutely painful and incapacitating lumbar spine condition in the absence of preexisting, underlying pathology.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, 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. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Finally, the hearing record does not contain any reference to a request by the claimant for the issuance of a subpoena. Accordingly, we find no error in that regard.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is _____ **TRANSIT AUTHORITY** and the name and address of its registered agent for service of process is

**CARRIER
ADDRESS
CITY, STATE**

Phillip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge