

APPEAL NO. 011864
FILED SEPTEMBER 13, 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 July 9, 2001. With regard to the issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and, therefore, did not have disability.

The claimant appealed, citing her medical evidence and testimony as establishing an injury and disability. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a sales associate. The claimant testified that on _____, a "plastic bin" of jewelry fell and as she attempted to catch it she heard or felt a "pop" in her elbow. There is contradictory evidence whether the claimant felt pain at the time. The claimant continued to work and testified that her pain became progressively worse until she saw Dr. B, a doctor who had treated her for a prior injury, on _____. Dr. B, in reports of March 30 and April 30, 2001, diagnosed a nerve entrapment syndrome injury caused by "repetitive lifting, and sliding open and closing jewelry cases." Nerve conduction tests were negative. Dr. B took the claimant off work on March 14, 2001. The claimant changed doctors to a chiropractic clinic, apparently on June 12, 2001.

During the CCH, a surveillance video was shown and the claimant neither denied nor confirmed that the individuals photographed were, or were not, her. The hearing officer commented "[h]aving listened to and observed Claimant[,] her testimony simply was not persuasive."

Much of the case rested on the claimant's credibility. It is the hearing officer who, as 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 evidence sufficiently supports the hearing officer's decision. 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge