

APPEAL NO. 011877  
FILED SEPTEMBER 24, 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 July 16, 2001. With regard to the sole disputed issue, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_.

The appellant (carrier) appealed, arguing, essentially, that the hearing officer's decision is against the great weight of the evidence and that the hearing officer should not be allowed to find a specific injury when the claimant was alleging a repetitive trauma injury. Neither the claimant or the sub-claimant filed a response.

DECISION

Affirmed.

The claimant testified that he was employed at a bakery working a night shift in the bread production division. The claimant testified that on \_\_\_\_\_, he felt a sharp pain to his lower right back on two separate occasions. The claimant testified that the first time he felt a pain to his lower right back was when he was walking into the employer's building after a lunch break, and the second time was when he was sweeping the employer's building. The claimant alleged that his repetitive duties of lifting, stooping, bending, and pushing and pulling oven racks, bread pans and bread dough caused the two separate incidents of pain to his lower right back.

The evidence sufficiently supports the hearing officer's determination that "on \_\_\_\_\_, Claimant sustained an injury to his back when he walked into Employer's building after a lunch break and a few minutes later when he was sweeping." The hearing officer was persuaded that the claimant sustained an injury based on the claimant's testimony and the medical reports in evidence that showed a lumbrosacral sprain to the lower right back. The hearing officer commented that the "Claimant presented a theory that his injury was a repetitive trauma injury; he did not prove such an injury. However, [claimant] did prove a specific injury that occurred on \_\_\_\_\_."

The hearing officer did not err by making findings which were supported by the evidence and in finding a specific incident, although the claimant alleged a repetitive trauma. It is the hearing officer, as 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 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.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**LAW OFFICE OF LARRIET E. THOMAS  
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AUSTIN, TEXAS 78755-2367.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Susan M. Kelley  
Appeals Judge