

APPEAL NO. 012038
FILED SEPTEMBER 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 July 24, 2001. With regard to the sole issue before her, the hearing officer determined that the appellant (claimant) did not sustain an injury to her right wrist, right elbow, and neck, in addition to the left wrist and left elbow, on October 20, 1999.

The claimant appealed the hearing officer's determinations regarding compensability to her right upper extremity. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that she was employed as a cashier for the employer's convenience store. The claimant testified that on _____, she twisted her left wrist when she lifted a case of beverages up to the refrigerator. The carrier accepted an injury to the left wrist and left elbow. The claimant stated that six months after the _____, injury, she experienced pain to her right wrist, elbow, and neck because of overuse of the right upper extremity at work.

The credibility of the claimant and the treating doctor were at issue in this case, and the hearing officer resolved the dispute against the claimant. The evidence sufficiently supports the hearing officer's determination that the claimant failed to establish by a preponderance of the evidence, "particularly [by] medical evidence," that she sustained an injury to her right wrist, right elbow, and neck, in addition to the _____, injury to the left wrist and left elbow.

The claimant has the burden to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Whether the claimant sustained an occupational disease (repetitive trauma) injury to her right wrist, right elbow, and neck in the course and scope of her employment is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 990841, decided June 1, 1999.

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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
SUITE 750
COMMODORE I
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge