

APPEAL NO. 012156
FILED OCTOBER 22, 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 August 21, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease and did not have disability as a result of an injury in the form of an occupational disease; that the claimant's notice of injury was timely; and that the respondent (carrier) did not waive its right to contest the compensability of the claimed injury. The claimant appeals the injury and disability determinations, arguing that she presented opinions from two doctors that repetitive trauma at work caused her injury and that the carrier presented no medical evidence that the duties described by the witnesses could not have caused a repetitive trauma injury. In its response, the carrier contends that the burden of proof belonged to the claimant and that she failed to prove that she sustained an occupational disease.

DECISION

Affirmed.

The claimant testified that she worked for the employer for nine months and that from March 2000 until October 2000, her primary duty was cutting cable. There was conflicting evidence about the steps necessary to cut the cable; the amount of cable cut; and the size of the cable. The claimant testified that she would have to retrieve the cable with both hands and put a lot of pressure on it with her left hand so it would remain stationary while she cut it from the roll; and that once the cable was cut from the roll she then made additional cuts to the plastic on each end. She stated that on _____, she began to feel pain, burning, and numbness in her left hand and that she reported the incident immediately to her supervisor, Mr. L; that she continued to work until October 3, 2000; and that she went to Dr. C on October 9, 2000. Dr. S, a hand specialist, performed hand surgery on the claimant's left hand on April 20, 2001. The records reflect inconsistencies in the histories given by the claimant to the physicians and the testimony given at the CCH.

Although the medical report from Dr. C specifically states that the claimant's "condition was solely caused by the repetitive strain/pressure of her occupational duties," a fact finder is not bound by medical evidence when that evidence is manifestly dependent upon the credibility of the information given by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appellate reviewing tribunal, the Appeals Panel will not substitute our judgment for that of the hearing officer when the determination is not so against the

overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). There was sufficient evidence to support the hearing officer's determination that the claimant did not sustain an injury in the form of an occupational disease.

"Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury in the form of an occupational disease, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

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

**GAIL L. ESTES
1525 NORTH INTERSTATE 35E, SUITE 220
CARROLLTON, TEXAS 75006.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge