

APPEAL NO. 012452
FILED NOVEMBER 28, 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 September 27, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from May 7, 2001, through the date of the CCH.

The appellant (carrier) appeals, principally on the factual sufficiency of the evidence, attacking the claimant's credibility and reciting evidence in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was the store manager at one of the employer's shoe stores. It is undisputed that the claimant had been receiving some medical treatment for a "pop" in her neck prior to the date of injury. The claimant testified how she was unloading some freight boxes containing shoes when two boxes fell and struck her on the head and shoulder on _____. There was a good deal of conflicting evidence about how high or how neatly the boxes were stacked. The claimant was subsequently terminated because of allegations of theft, although the claimant testified that any charges had been dismissed. Several MRIs were performed involving the brain, head, and neck. The medical evidence would support at least some sort of soft tissue injury.

The hearing officer commented:

This is a question of credibility. Carrier attempted to cast doubt on Claimant's credibility; however, I believed Claimant, and I found her to be very credible. Claimant has met her burden of proof with respect to compensability and disability. Contrary to what the Carrier asserted the police incident report was not made until May 8, 2001, after Claimant had contact with the General Manager, Claimant testified that the theft charges have since been dismissed because of lack of evidence.

The hearing officer is 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.). That a different fact finder may have reached a different conclusion based on the same evidence is not a basis for us to reverse the hearing officer's decision. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ.

App.-Corpus Christi 1977, writ ref'd n.r.e.). 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 **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS
450 GEARS RD., SUITE 500
HOUSTON, TEXAS 77067.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge