

APPEAL NO. 012569
FILED DECEMBER 6, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on October 2, 2001, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from October 31, 2000, through the date of the hearing. The appellant (carrier 1) requests review, asserting that the hearing officer's determination of the injury issue is against the great weight of the evidence and that because the claimant did not sustain a compensable injury, he did not have disability. The respondent carrier (carrier 2) filed a response urging the sufficiency of the evidence to support the challenged determinations. The file does not contain a response from the claimant. Carrier 2 also asserts that the appeal from carrier 1 may have been untimely filed. Carrier 1 received the Decision and Order on October 8, 2001, and timely filed its appeal on October 25, 2001. See Section 410.202(d), effective June 17, 2001.

DECISION

Affirmed.

The claimant testified that he sustained a work-related injury to his right wrist on June 17, 1999, while working for Manpower (employer 1), who had workers' compensation coverage with carrier 2. He stated that he was treated by Dr. C, was off work about two months, was released to work full duty with an impairment rating of zero percent, and received no further treatment for that injury. He further stated that he then went to work for (employer 2); that on _____, while lifting a 12-pound insert from a mold, he was injured when his right wrist "popped" and he experienced immediate pain in his right wrist and right elbow and developed shoulder and neck symptoms; and that Dr. C told him he had sustained a new injury. The claimant's testimony concerning Dr. C's opinion that he sustained a new injury is fully supported by Dr. C's explicit statement to that effect in his correspondence of February 26, 2001. The November 13, 2000, and September 8, 2001, reports to carrier 2 from Dr. CO also support the claimant's contention that he sustained a new injury. The claimant also testified that when he was released to work with certain lifting and repetitive motion restrictions, employer 2 had no such work for him.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

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.). As an appellate reviewing tribunal, 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. 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 insurance carrier 1 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge