

APPEAL NO. 012578
FILED DECEMBER 3, 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 September 24, 2001, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with an injury date of _____, and that he, therefore, did not have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds and asserts that his claim was not made in retaliation for the termination of his employment. The respondent (carrier) has filed a response urging that the evidence is sufficient to affirm the challenged determinations.

DECISION

Affirmed.

The claimant testified that since January 1999, his work for the employer involved taking 50 to 100 telephone calls daily from customers and typing data into the computer; that on or about _____, he had aching and cramping in his hands; that his employment was terminated on January 6, 2000, and he has not since been employed; that he sometime later saw a television advertisement about work-related carpal tunnel syndrome (CTS) and then realized that his symptoms were related to his repetitive work tasks; and that he reported the injury to the employer on January 21, 2000, and sought medical treatment on February 12, 2000. He further stated that he has been diagnosed with and treated for CTS.

The hearing officer makes clear that she did not find the claimant's testimony credible and persuasive. 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 the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS, 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge