

APPEAL NO. 012653
FILED DECEMBER 4, 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 July 17, 2001. In Texas Workers' Compensation Commission Appeal No. 011913, decided September 27, 2001, the Appeals Panel remanded the case to determine the true corporate name of the insurance carrier and deliver the same to the respondent (claimant). This has apparently been done, as evidenced by Hearing Officer's Exhibit No. 3. The hearing officer recited that no further hearing was necessary, that none was held, and that his original decision was adopted verbatim. With regard to the four issues before him, the hearing officer determined that (1) the claimant sustained a compensable repetitive trauma injury; (2) the claimant has disability beginning _____, and continuing to the date of the CCH; (3) the claimant timely notified the employer of her injury pursuant to Section 409.001; and (4) date of injury is _____. The appellant (carrier) appeals the adverse findings based on insufficiency of the evidence and cites evidence that supports its position. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a telephone service representative making calls and obtaining sales leads. While it is undisputed that there was some typing and computer work involved, the extent of such repetitive work was disputed. The hearing officer's Statement of the Evidence fairly summarizes the claimant's testimony. Testimony and documentary evidence also fairly establish that the claimant had a number of physical problems, including fibromyalgia, resulting from falls and other injuries prior to the injury in question here. Apparently, at some time in the latter part of 2000, the claimant began having a problem of numbness and tingling with her right thumb, and that problem became worse, spreading to her hand and wrist. The claimant testified that she had spoken with some coworkers who had carpal tunnel syndrome (CTS) but that she did not associate her condition with her work. The claimant testified that on Friday, February 2, 2001, her hand, or hands, "went to sleep three times" while she was typing, and that she had pain from her wrists to her shoulders.

The claimant sought medical care from Dr. LP on _____, complaining of pain, numbness, and tingling in her fingers and hands. Dr. LP diagnosed bilateral CTS, explained to the claimant how the injury was work related, and took the claimant off work. The claimant testified that that was the first time she knew her hand and wrist problems were work related. The claimant reported her injury to the employer the same day, _____. At least two other doctors verified that the claimant has bilateral CTS. The claimant had right CTS release surgery on April 5, 2001. Dr. LP testified at the CCH, explaining his diagnosis of CTS and the tests that were performed, and giving his opinion that, based on his examination, the claimant's job could contribute to CTS.

Four videotapes in evidence show other workers performing duties similar to what the claimant had been performing. The carrier's vocational case manager was allowed to testify as an expert; she testified that, in her opinion, based on review of the videotapes, the claimant's "job does not constitute repetitive activity," therefore the claimant did not sustain a repetitive injury. The carrier's peer review doctor reviewed the videotapes and medical records; he commented that if the claimant has CTS, it is from causes other than her work. Testimony from the employer's human resources manager was that the claimant had received some warnings for absenteeism.

The evidence was in conflict, particularly the nature and extent of the claimant's job duties. The hearing officer's determination that the claimant sustained a repetitive trauma injury is supported by the claimant's testimony, the hearing officer's viewing and interpretation of the videotapes, and Dr. LP's testimony. Section 408.007 provides that the date of injury for an occupational disease (Section 401.011(34), which includes repetitive trauma) is the date on which the employee knew or should have known the disease may be related to the employment. The hearing officer obviously believed the claimant's testimony that this was when she first saw Dr. LP on _____. The hearing officer's determination on this point is supported by the evidence. The claimant promptly reported her injury on that date. The claimant's testimony and medical evidence support the hearing officer's determination on disability.

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.). 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 decision and order of the hearing officer are affirmed.

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

**C.J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge