

APPEAL NO. 013157  
FILED FEBRUARY 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 9, 2001. He determined on the stated issue that the respondent's (claimant) herniated discs were related to her compensable injury of \_\_\_\_\_.

The appellant (carrier) has appealed, arguing that the carrier had no sole cause burden in this case and further arguing that the claimant failed to establish that the effects of her injury had continued and caused the herniations that were later discovered to exist.

DECISION

We affirm the hearing officer's decision.

The hearing officer has fully set forth the facts and we incorporate his decision by reference. Although the carrier argues that it is only a carrier who can affirmatively raise a sole cause defense, this may be done in substance without the use of "magic words." However, we observe that whether or not one views this as a "sole cause" case, it is clear that the hearing officer was also persuaded by the claimant's testimony and her medical evidence that the effects of her back injury and subsequent surgery never went away and this, coupled with his conclusion that there was no acute episode that caused an intervening injury, supported his finding that the claimant sustained her burden of proving that her injury was a producing cause of her later-developing herniations at and around the site of her surgery.

The evidence was in diametric opposition on several key points. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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 **LUMBERMENS UNDERWRITING ALLIANCE** and the name and address of its registered agent for service of process is

**DANIEL J. O'BRIEN  
12200 FORD ROAD, SUITE 344  
DALLAS, TEXAS 75234-7625.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge