APPEAL NO. 020517
FILED APRIL 17, 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 (CCH) was held on January 23, 2002. The record closed on February 8, 2002. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of _____, and did not have disability. The claimant appeals, essentially arguing that the decision of the hearing officer is not supported by the great weight of the evidence. The respondent (carrier) replies, asserting the claimant's appeal is untimely, but otherwise urging affirmance.

DECISION

Affirmed.

As to the carrier's assertion that the claimant's appeal is untimely, we refer the carrier to Section 410.202(d), amended effective June 17, 2001, to provide that Saturdays, Sundays, and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal must be filed. The assertion of untimeliness is without merit.

The claimant did not appear at the CCH and did not respond to a "10-day" show cause letter sent by the hearing officer. The claimant's case was presented through her attorney. In her appeal, the claimant acknowledges she failed to respond to the 10-day letter. Where a party fails to appear at a scheduled CCH, the Appeals Panel has held that regardless of good cause for the single failure to appear, that party may subsequently present his or her evidence at a hearing. Texas Workers' Compensation Commission Appeal No. 970121, decided March 4, 1997. However, what we have here is a failure to appear at the scheduled CCH, followed by a letter to the claimant giving her an opportunity to respond within 10 days, and the subsequent failure to respond within the terms specified in the letter. Under these circumstances, we find no abuse of discretion in the entering of a final Decision and Order. Texas Workers' Compensation Commission Appeal No. 991155, decided July 15, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 971530, decided September 18, 1997 (Unpublished).

In her appeal the claimant cites a prior decision from the Appeals Panel involving the same employer and the same videotape evidence, essentially arguing that a previous hearing officer had not found any validity to the videotapes, and that this hearing officer should have found the same way. We disagree. This hearing officer is not bound by another hearing officer's interpretation of the evidence, even the same item of evidence. In addition, the information about the other case was not placed in evidence during this CCH. Since Section 410.203(a)(1) permits the Appeals Panel to consider the record developed at the hearing, and this information was not included, we decline to consider it

for the first time on appeal. *See* Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992, and Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury, with a date of injury of _____. The claimant asserts that she has carpal tunnel syndrome as a result of the repetitive hand movements she performed at work. The question of whether the claimant sustained the alleged injury was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the claimant's burden of proving that she was injured as a result of performing repetitively traumatic activities at work. The hearing officer was acting within his province as the trier of fact in so finding. Our review of the record does not reveal that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

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.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Terri Kay Oliver
Appeals Judge