APPEAL NO. 020560
FILED APRIL 23, 2002

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 February 19, 2002, the hearing officer determined that the date of the appellant's (claimant) repetitive trauma injury is _____; that the claimant did not sustain a compensable repetitive trauma injury; that the claimant did not timely report the claimed injury nor timely file the claim; and that because the claimant does not have a compensable repetitive trauma injury, he does not have disability. The claimant has appealed on evidentiary grounds, contending that he was not told by the doctors in 1998 that his diagnosis was carpal tunnel syndrome (CTS) and that it was not until June 5, 2001, that his doctor told him he had CTS and related it to his work; that his injury is due to working hard with his hands for seven years and the frequency of the repetitiveness of his job has not yet been determined; that he reported the CTS injury to his supervisor on June 6, 2001, the day after he was told he had it; that if his date of injury was determined to be earlier, then he had good cause for not reporting the CTS injury before he was told he had it on June 5, 2001, because he had been earlier told he had arthritis; that his claim was timely filed for the same reason; and that he has had disability since his carpal tunnel surgery on October 29, 2001. The respondent (carrier) filed a response which urges the sufficiency of the evidence to support the challenged findings and conclusions.

DECISION

Affirmed.

The claimant testified that he was employed by the employer as a truck driver for approximately seven years; that his job entailed loading 55-gallon drums of chemicals onto the truck with a forklift, driving the truck out to oil leases on rough roads, stopping at the well sites and offloading the chemicals through hoses, returning to the yard and unloading the empty drums, and repeating the process the next day. He said he often worked 15-hour days, five days per week and maintained that his job required hard work with his hands, including driving a truck on rough roads, lifting, and pulling. The claimant further testified that, notwithstanding the references in his treating doctor's records of July and August 1998 to CTS, including a referral for electrodiagnostic tests and the prescription of wrist braces which he wore off the job, he was told by his treating doctor that he had arthritis and was not specifically told by the doctor that he had work-related CTS until June 5, 2001. The date he reported the injury, June 6, 2001, and the date his claim was filed, August 31, 2001, were not disputed. The carrier presented the testimony of a doctor who reviewed the claimant's records and opined that the claimant's work neither caused nor aggravated the bilateral CTS for which the claimant underwent surgery in October and December 2001. The claimant presented medical evidence to the effect that his CTS was indeed related to his work.

The claimant had the burden to prove by a preponderance of the evidence that he sustained the claimed repetitive trauma injury (Section 401.011(36)), the date of the occupational disease injury (Section 408. 007), that he had disability (Section 401.011(16)), that he timely reported the injury (Section 409.001(a)(2)), and that he timely filed a claim (Section 409.003(2)). 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. This holds true as well for the date of injury, timely reporting, and timely filing of the claim issues. 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); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge