

APPEAL NO. 021165
FILED JUNE 24, 2002

Following a contested case hearing held on April 11, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability from August 10, 2001, through the date of the hearing; and that the compensable injury extends to and includes his left shoulder, neck, left elbow, left cubital tunnel syndrome, left AC joint, and left carpal tunnel syndrome. The appellant (carrier) has appealed these determinations on sufficiency of the evidence grounds. The claimant's response urges the sufficiency of the evidence to support our affirmance.

DECISION

Affirmed, as reformed.

We note at the outset an apparent typographical error in the numbering of the hearing officer's Findings of Fact (1, 2, and 4) and we reform the decision to number them 1 through 3.

The claimant testified that, while working on a printing press on _____, he had trouble closing an ink rail and had to jerk on it and push it in to get it closed and locked; that very soon thereafter, he experienced the onset of pain in his left shoulder and left elbow, and that by the time he was taken to a doctor later that day, he also had neck and left wrist pain. He said he has been unable to do his job since his injury because his work requires the use of his left arm and he is in constant pain from his neck, left shoulder, left elbow, and left wrist and has been told he needs shoulder surgery because the conservative treatment modalities have not relieved his pain.

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. As with these issues, he also had the burden to prove by a preponderance of the evidence the extent of his injury. 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. 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 claimant's testimony and his medical records sufficiently support the occurrence of the injury, the components of the injury found by the hearing officer, and the disability.

The decision and order of the hearing officer are affirmed as reformed.

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

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge