

APPEAL NO. 021197
FILED JULY 2, 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 August 20, 2001, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from January 17, 2001, through August 20, 2001. The appellant (self-insured) filed an appeal of these determinations on evidentiary sufficiency grounds. In Texas Workers' Compensation Commission Appeal No. 012187, decided November 7, 2001, the Appeals Panel reversed and remanded this case for reconstruction of the hearing record because the audiotape of the proceedings was not available for our review. A hearing on remand was held by the hearing officer, apparently on December 6, 2001, with the parties in attendance, and the hearing record was reconstructed. On April 30, 2002, the hearing officer issued a Decision and Order on Remand which incorporated the documentary evidence from the prior proceeding and summarized the claimant's testimony, and which once again determined that the claimant sustained a compensable injury on _____, and had disability from January 17, 2001, to August 20, 2001. The carrier has again requested review of these determinations. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, she arose from her chair at her desk to reach for a file and when she sat down, the chair rolled backwards and she fell to the floor with her left leg bent beneath her. She said that she worked in pain until her doctor took her off work effective January 17, 2001; that the doctor has provided her with injections in the knee and a brace, and that surgery is a possibility; and that she has not yet been released to return to work. The carrier contended that the claimant did not have a new injury because she had previously injured both knees in a fall at work and had complained of bilateral knee pain and worn a brace on her right knee. The hearing officer found that the claimant injured her left knee on _____, as a result of a fall at work while filing papers and that she had disability from January 17, 2001, through August 20, 2001.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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 decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is a **(self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JIS
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge