

APPEAL NO. 021556
FILED JULY 30, 2002

Following a contested case hearing (CCH) held on May 23, 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 determining that the appellant (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____; that this injury does not extend to and include an injury to the bilateral shoulders and right arm; and that the claimant had disability from _____, through January 13, 2002, but not between January 14, 2002, through the date of the hearing. The claimant's appeal contends that she met her burden of proving that her injury extended to her bilateral shoulders and right arm and that she "has disability beginning on _____ [sic] _____ to present and continuing pass [sic] the date of the [CCH]." The claimant asks the Appeals Panel to render a new decision that the claimant's compensable injury of _____, extends to and includes injury to her shoulders and right arm and that she "has disability from January 14, 2002 to the present and continuing." The response filed by the respondent (carrier) urges that the evidence is sufficient to affirm the challenged determinations and points out that there was no disputed issue concerning disability beyond January 13, 2002.

DECISION

Affirmed.

The claimant testified that she has worked as a sewing machine operator for the employer, an apparel manufacturer, since August 1993, and she described in detail her movements she makes sewing the inseams into approximately 1,200 pairs of pants per day or 6,000 pairs per week. She said that on _____, she had pain in her arms, shoulders, neck, and low back; that she was seen by the company nurse that day and thereafter was seen and treated by several doctors; that Dr. G took her off work on June 18, 2001, and released her to return to work in January 2002; and that she returned to her regular work duties on January 14, 2002. The medical records introduced by the claimant do not contain diagnoses relating to her shoulders and right arm. Despite the fact that the disputed issue of disability was for the period of _____, through January 13, 2002, which is the period for which the claimant argued at the hearing, her appeal, inexplicably, asserts error in the hearing officer's not finding that she had disability through the date of the hearing.

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 **ACE USA/OR** and the name and address of its registered agent for service of process is

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

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge