

APPEAL NO. 022403
FILED NOVEMBER 6, 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 August 23, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appealed on sufficiency of the evidence grounds and also argued that the Texas Supreme Court decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), resulted in the respondent (self-insured) having waived its right to contest compensability. The self-insured responded, urging that the decision of the hearing officer be affirmed and that the claimant could not argue Downs for the first time on appeal.

DECISION

Affirmed.

On appeal, the claimant argues that the hearing officer's decision and order should be reversed and remanded to consider carrier waiver under Downs. The record does not reflect that the claimant raised a carrier waiver issue at the benefit review conference or preserved error on appeal at the CCH. It is well-settled that the Appeals Panel is limited to issues developed below and that we will not consider an issue raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 011288, decided July 19, 2001.

Whether the claimant sustained a compensable injury and had disability are factual questions for the fact finder to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The evidence supports the hearing officer's factual determinations. 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 to be 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).

We affirm the hearing officer's decision and order.

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

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

Veronica Lopez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge