

APPEAL NO. 031070
FILED JUNE 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury, in the form of an occupational disease, with a date of injury of _____, and that the claimant had disability from July 24 through August 24, 2002. The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

An occupational disease includes a repetitive trauma injury. Section 401.011(34). The claimant contended that he sustained a compensable repetitive trauma injury as a result of performing his work activities for the employer. The claimant had the burden to prove that he sustained a repetitive trauma injury as defined by Section 401.011(36) and that he has had disability as defined by Section 401.011(16). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The carrier argues that the claimant had a preexisting condition. The Appeals Panel has held that an aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act. See Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.); Peterson v. Continental Casualty Company, 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.). Also, the carrier argues that the hearing officer erroneously relied on a medical report dated October 31, 2001, in which Dr. E opined that the "[a]n EMG/NCV test dated 8/30/01 was performed and did reveal underlying non-symptomatic carpal tunnel. It wasn't until 7/12/02 after doing his repetitive job did he report any symptoms." It is clear from the record that the hearing officer considered the conflicting medical evidence and the claimant's testimony, and found that the claimant sustained a compensable injury, in the form of an occupational disease, with a date of injury of _____. We conclude that the hearing officer's injury and disability determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**ROBERT RAMSOWER
THANKSGIVING TOWER, 1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75201.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge