

APPEAL NO. 031374
FILED JULY 16, 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 30, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury, and that she does not have disability. The claimant appealed, arguing that the hearing officer's decision is against the great weight of the evidence. The respondent (carrier) filed a response, urging affirmance.

DECISION

Affirmed.

The claimant testified that she was employed as a customer service sales representative for the employer. She stated that on _____, she injured her left elbow, left hand, left shoulder, and her neck while performing repetitive data entry tasks. She stated that she reported the injury to her supervisor, sought medical treatment on November 7, 2002, was taken off work on November 7, 2002, and has not worked since November 6, 2002, because of the injury.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury. Section 401.011(36) provides that a repetitive trauma injury means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment. The claimant has the burden to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). The hearing officer found that the claimant's job duties were not repetitious or traumatic in character; that she was not injured at work on _____; that there was no "creditable" medical evidence that supports an injury at work; and that there is no causal relationship between the claimant's complaints and her job duties.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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.). 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 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).

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge