

APPEAL NO. 032037
FILED SEPTEMBER 2, 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 July 1, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive traumatic injury; that the date of injury (DOI) is _____; that the respondent (self-insured) is not relieved of liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001; and that the self-insured's contest of timely reporting was based on newly discovered evidence that could not have reasonably been discovered at an earlier date. The claimant appeals the determinations that she did not sustain a compensable injury and that the self-insured's contest of timely reporting was based on newly discovered evidence, and the findings that support those determinations. The self-insured responded, urging affirmance of the injury determination and suggesting that the other appealed finding is moot in view of the DOI and timely notice determinations. The determinations of the DOI and timely notice were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove by a preponderance of the evidence that she sustained the claimed repetitive trauma injury (Section 401.011(36)). The Appeals Panel has stated that in workers' compensation cases, the disputed issue of injury 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.)). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Since the hearing officer determined that the DOI for the alleged repetitive trauma injury, the date that the claimant knew or should have known that her condition might be related to her employment, is _____, and that the claimant notified someone in a supervisory or managerial position of her claimed injury on February 4, 2003, we agree that the issue concerning whether the self-insured's contest of timely reporting of the injury was based on newly discovered evidence is moot, and need not be addressed in this decision. Had the hearing officer found an earlier DOI, and that the claimant had not given timely notice to her employer, the issue would need to be discussed further, but under the circumstances of this case, it is no longer important.

We affirm the decision and order of the hearing officer.

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

**OFFICE OF THE CITY CLERK
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge