

APPEAL NO. 032187
FILED OCTOBER 7, 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 scheduled for June 11, 2003, but reset to and held on July 29, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

We note that the Texas Workers' Compensation Commission received two separate appeals from the claimant, an appeal was received on August 18, 2003, and an appeal was received on September 16, 2003. Both appeals request reversal based on grounds of sufficiency of the evidence. However, the second appeal was untimely and will not be considered.

Whether the claimant sustained a compensable repetitive trauma injury or a compensable specific incident injury is a factual question for the hearing officer 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). 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). 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. 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). In this instance the hearing officer found that the claimant failed to prove that she sustained damage or harm to the physical structure of her right shoulder and/or cervical spine in the course and scope of her employment on _____, and that the claimant's job duties as a picker did not require repetitive, physically traumatic use of her right shoulder and/or cervical spine. We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his decision that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge