

APPEAL NO. 040817
FILED MAY 25, 2004

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 March 24, 2004. The hearing officer determined that the appellant's (claimant) compensable injury (lumbar sprain/strain and a closed head injury without residual effects) sustained on _____, does not extend to and include degenerative changes at [L]4-5 with moderate canal and foraminal stenosis, an annular bulge and degenerative changes at L5-S1, a thoracolumbar sprain, aggravation of preexisting spondylosis, aggravation of Grade I degenerative L4-5 spondylolisthesis and an injury to the cervical spine, thoracic spine and the bilateral knees in the form of severe degenerative joint disease; and that the claimant does not have disability from June 8, 2002, to the present resulting from an injury sustained on _____. The claimant submitted a request for review. The respondent (carrier) responded, asserting that the claimant's appeal is insufficient to appeal the extent-of-injury determination, and otherwise urging affirmance.

DECISION

Affirmed.

The carrier asserts that the claimant's request for review is insufficient to appeal the extent-of-injury determination, and that it has become final. See Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)). However, the Appeals Panel has held that no particular form of appeal is required and an appeal, even though terse or inartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993. Generally, an appeal which lacks specificity will be treated as a challenge to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. While the claimant's request for review would not be selected as a model pleading, we will consider the fact that it named some of the contested body parts as making it a minimally sufficient challenge to the sufficiency of the evidence supporting the hearing officer's resolution of the extent-of-injury determination.

Whether a claimant's injury extends to and includes certain conditions and whether a claimant has disability are questions of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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.). Although there was conflicting evidence in this case, there is sufficient evidence to support the hearing officer's determinations that the compensable injury does not extend to the named conditions and that the claimant does not have disability resulting from her compensable injury. 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. 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 decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Legion Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge