

APPEAL NO. 041660
FILED AUGUST 30, 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 June 9, 2004. The hearing officer resolved the disputed issues by deciding that on _____, the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease and had no disability. The claimant appealed, arguing that the determinations are not supported by sufficient evidence and are so against the great weight and preponderance of the evidence as to be manifestly unjust and wrong. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury and that she has had disability. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36).

The hearing officer specifically found that there is no causal connection between the claimant's work for the employer on and before _____, and her claimed repetitive trauma injury to her bilateral upper extremities. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Our review of the record reveals that the hearing officer's determinations regarding compensable injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The claimant contends that the hearing officer erred by giving greater weight to the report of Dr. W. The hearing officer acknowledged that the report appeared to contain some erroneous findings related to the claimant's history. However, he was acting within his province as fact finder in assigning greater weight to the medical report of Dr. W. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). This is so even though another fact finder might have drawn other inferences

and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge