

APPEAL NO. 031961
FILED SEPTEMBER 15, 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 June 25, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury; that the date of the alleged injury is _____; that the claimant timely reported her alleged injury to her employer; and that she did not have disability because she did not sustain a compensable injury. In her appeal, the claimant argues that the hearing officer erred in determining that she did not sustain a compensable injury and that she did not have disability. The appeal file does not contain a response from the respondent (carrier). The carrier also did not appeal the hearing officer's date of injury and timely notice determinations and those determinations have become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma occupational disease injury. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the nature and duration of the repetitively traumatic activities that the claimant was required to perform. The hearing officer simply was not persuaded that the claimant sustained her burden of proving that she sustained bilateral upper extremity injuries as a result of the data entry work she was required to perform. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*. We find no merit in the claimant's assertion that the hearing officer misinterpreted the claimant's testimony about the duration of her typing. The claimant testified on redirect examination that she averaged

30 to 40 minutes of continuous typing and then her data entry duties would be interrupted to perform a different type of activity. The hearing officer's statement of the evidence properly summarizes that testimony.

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 hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge