

APPEAL NO. 032579  
FILED NOVEMBER 19, 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 (CCH) was held on August 26, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) did sustain a compensable injury on \_\_\_\_\_, and had disability from October 14, 2002, continuing to the date of the CCH. The appellant (carrier) appealed, arguing that the determinations of the hearing officer are against the great weight of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It was the claimant's burden to prove by a preponderance of the evidence that he sustained the claimed injury and that he had disability, as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability 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.). 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 find no merit in the carrier's assertion that the hearing officer ignored the documentary evidence. The hearing officer specifically noted that all of the evidence was considered in making the findings of fact and conclusions of law. It was within the province of the hearing officer to find the testimony of the claimant credible and to resolve the substantial conflicts and inconsistencies in the evidence in favor of the claimant. The determinations of the hearing officer were further supported by the opinion from the claimant's treating doctor that the claimant sustained a new injury on

\_\_\_\_\_, and the opinion of a carrier-selected doctor in a medical report dated April 15, 2003, that “there seems to be a good likelihood that events of \_\_\_\_\_ contributed at which time his new clinical features emerged.”

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN NORTH AMERICA, A DIVISION OF ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**LEO MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge