

APPEAL NO. 002830

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 9, 2000, a contested case hearing (CCH) was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not have disability resulting from the injury sustained on _____, from May 17, 2000, through the date of the CCH. The claimant appealed and the (respondent) carrier responded.

DECISION

The hearing officer's decision is affirmed.

The claimant sustained a compensable injury to his right leg on _____. Conflicting evidence was presented on the issue of whether the claimant had disability, as defined by Section 401.011(16), from May 17, 2000, through the date of the CCH. 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 from the evidence. The hearing officer's determination that the claimant did not have disability from May 17, 2000, through the date of the CCH is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We find no reversible error in the hearing officer's ruling allowing the carrier's witness to testify about her conversation with the safety director. We find no reversible error in the hearing officer's ruling excluding a medical report dated October 30, 2000, that was not exchanged until the CCH. We decline to remand the case to the hearing officer for consideration of surgery that the claimant states he had subsequent to the CCH. The claimant's surgery may be considered for time periods subsequent to the CCH.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge