

APPEAL NO. 010016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) did not sustain an injury in the course and scope of employment and did not have disability resulting from the alleged back injury. The claimant appealed, asserting several procedural errors and, in essence, alleging that the hearing officer's determination of threshold facts was against the great weight of the evidence. The respondent (carrier) responded that the claimant waived the point of error on the admission of documentary evidence, that the appeal of the hearing officer's decision is not a proper forum to address assertions of discrimination, and that the hearing officer's decision is not against the great weight of the evidence and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

Our review of the record indicates that no objections were made at the hearing to the admission of the carrier's exhibits. While we perceive no error in the exhibits' admission, any potential error was waived by the claimant's failure to object at the time the exhibits were offered. Similarly, there was no objection to the carrier's calling the claimant's witnesses. There was no error in allowing witnesses, known to the parties and available, to testify. Even if error had existed, it was waived by the claimant's failure to object to the witnesses at the time of the hearing.

Conflicting evidence was presented at the hearing. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In the case before us, we do not find that the hearing officer's determinations are against the great weight and preponderance of the evidence.

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge