

APPEAL NO. 010091

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 December 18, 2000. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted) and did not have disability.

The claimant appealed, reiterating much of his testimony at the CCH and asserting that he had sustained an injury "in the exercise of [his] duties." The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant was employed as an electrician and testified that on _____, as he was leaning over, he felt a "thump" in his back. The claimant testified that shortly thereafter, he began to experience pain in his legs, knees (like a nail was being driven in his knee), and feet. At the employer's urging, the claimant continued to work in a light-duty position for another two days and finally was unable to work in that position because of pain. The claimant was unable to explain what happened other than the pain came on gradually and has progressively gotten worse. Neither the claimant, nor any of the medical reports in evidence, can give a diagnosis or an explanation of how the claimant's work caused whatever injury the claimant may have. The claimant testified that he believes his injury is work-related because he is unable to identify any other possible cause for his symptoms.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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.). 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).

In that we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge