

APPEAL NO. 010571

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 5, 2001, a contested case hearing was held. The hearing officer determined that the respondent (claimant) fractured his finger on _____, and had disability from this injury from October 1 through 6, 2000.

The appellant (carrier) appeals, arguing facts it states show that no injury occurred. The carrier also points out that there was no evidence that the claimant did not work for the period of disability found. There is no response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant injured his finger. The evidence was conflicting, but the hearing officer has ultimate responsibility to assign weight and credibility to the evidence. Section 410.165. The Appeals Panel will not set aside his findings absent a great weight and preponderance of the evidence, which does not exist here. We affirm the determination that the claimant hurt his little finger.

Likewise, the hearing officer did not err in his determination of disability for the entire week of October 1 through 6, 2000. Disability has a definition in the 1989 Act that is intertwined with the ability to earn one's previous wage. Section 401.011(16) defines disability as:

the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

We have reviewed the record and find that the hearing officer's decision is supported.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company

v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order on both appealed points.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge