

APPEAL NO. 010591

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 February 6, 2001. With respect to the issues before him, the hearing officer determined that on _____, the respondent (claimant) sustained a compensable injury to his right shoulder that resulted in disability beginning on March 2, 2000, and continuing through February 6, 2001. The appellant (carrier) urges on appeal that these determinations are against the great weight of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

A compensable injury is defined as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant had the burden to prove that he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). In the present case, the hearing officer determined that the claimant sustained a compensable injury. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to 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. 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 to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

"Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant bears the burden of establishing that a compensable injury was a producing cause of his disability.

The claimant testified that on the date of injury, he earned \$6.35 per hour and worked at least 40 hours per week. After the injury, the claimant testified that he could no longer perform his job because he was medically restricted from overhead lifting. In June 2000, he worked for approximately two weeks as a video store clerk earning \$5.50 per hour. The claimant's testimony is conflicting as to whether he quit working at the video store or was terminated. In any event, he subsequently enrolled as a full-time student in August 2000, and began working again, at a cultural center, while attending school, in

September 2000. He testified that as of the date of the CCH, he works approximately 30 hours per week at the center earning \$6.00 per hour, but he was not attending school.

After carefully reviewing the record in this case, we find that there is sufficient evidence to support the hearing officer's determination that the claimant had disability from March 2, 2000, through the date of the CCH.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge