

APPEAL NO. 010623

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 March 7, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, which resulted in disability beginning on October 23, 2000, and continuing through the date of the CCH. The appellant (carrier) urges on appeal that these determinations are against the great weight of the evidence. The claimant urges affirmance.

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 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 when he received an electrical shock on _____. This determination is supported by the claimant's testimony and the medical records. Additionally, Dr. O testified that the type of electrical shock sustained by the claimant could result in neurological and/or tissue damage.

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 likewise a question of fact to be determined by the hearing officer. Texas

Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Michael B. McShane
Appeals Judge