

APPEAL NO. 010656

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 2, 2001. The hearing officer determined that the respondent (claimant): (1) sustained a compensable injury in the course and scope of his employment on _____; (2) was not intoxicated at the time of the injury; (3) had disability from December 7, 2000, continuing as of the date of the CCH, as a result of the compensable injury; and (4) did not make an election of remedies which would bar him from pursuing workers' compensation benefits. The appellant (carrier) has appealed these determinations as against the great weight and preponderance of the evidence and also, as to the election of remedies issue, as legal error. The claimant has not responded to the carrier's appeal.

DECISION

Affirmed.

Each of the disputed issues was a factual question to be resolved by the hearing officer. The 1989 Act provides that 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Regarding the carrier's attempt to characterize the election of remedies issue as being "proved as a matter of law," we disagree. This was a factual matter for determination by the hearing office and there was sufficient evidence in the record from which the hearing officer could reach the result he did. Under these circumstances, we may not second-guess his determination.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

CONCUR IN THE RESULT ONLY:

Gary L. Kilgore
Appeals Judge