

APPEAL NO. 010676

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 1, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury to her right elbow and, consequently, did not have disability, and that no reliable date of injury was established by the evidence. On appeal, the claimant urges that these determinations as well as the factual findings from where they are drawn are so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. The claimant additionally asserts that the hearing officer failed to properly consider all of the evidence presented. The respondent (carrier) 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 she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). 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). Conflicting evidence was presented at the hearing regarding whether the claimant sustained an injury to her right elbow while in the course and scope of her employment and, if so, on what date. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer determined that the claimant did not meet her burden of proving that she sustained a compensable injury and that no reliable date of injury had been 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). While it is apparent that the hearing officer did not find that the evidence supported the claimant's position, we find no merit in the claimant's assertion that the hearing officer failed to properly consider all of the evidence presented or that the claimant was penalized for not being able to read English.

"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). Since we find no error in the hearing officer's determination that the claimant did not sustain a compensable injury, there can be no disability.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge