

APPEAL NO. 010709

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 March 12, 2001. With respect to the issues before her the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had periods of disability as a result of the injury. The appellant (carrier) appeals, contending that the decision is against the great weight and preponderance of the evidence. There is no response from the claimant in the file.

DECISION

Affirmed.

The claimant testified that for 15 to 20 minutes on _____, he drove a delivery truck through dense smoke caused by a controlled burn. Medical reports from Dr. M indicated that the claimant had reactive airway disease (RAD) from the smoke which caused his disability. There was conflicting evidence offered on the cause of the RAD and on the disability issue.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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 so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge