

## APPEAL NO. 010826

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 April 3, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease and did not have disability. On appeal, the claimant expresses disagreement with this decision. The respondent (carrier) urges affirmance.

### DECISION

Affirmed.

An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996. In the present case, the hearing officer determined that the claimant did not sustain a compensable injury in the form of an occupational disease and, consequently, did not have disability. 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. Even if different inferences could be drawn, 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).

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge