

APPEAL NO. 010834

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 30, 2001. With respect to the issue before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____. The appellant (carrier) asserts on appeal that this determination is not supported by the evidence or, alternatively, is against the great weight and preponderance of the evidence. Additionally, the carrier asserts that the hearing officer relied on erroneous findings of fact in making her decision. The disputed findings of fact are: (1) that on _____, while performing her work activities and standing from a bending position after organizing calendars on a lower shelf, the claimant experienced a popping sensation in her right knee followed by pain and swelling in her right knee and an inability to extend the knee; and (2) that Dr. B diagnosed the claimant as having a meniscus tear and popliteal cyst resulting from the claimant's repetitive work activities and the _____, incident. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

A "compensable injury" means "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.). In the present case, the hearing officer determined that the claimant sustained a compensable injury. 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.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge