

APPEAL NO. 010933
FILED JUNE 18, 2001

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 5, 2001. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) had disability as a result of his _____, compensable injury from June 15 to December 20, 2000. In its appeal, the appellant (carrier) argues that the hearing officer's disability determination is against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability, as a result of his compensable injury, from June 15 to December 20, 2000. Disability presented a question of fact for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there was conflicting evidence on the issue of whether the claimant had disability for the period claimed. The hearing officer resolved that conflict in favor of the claimant and she was acting within her province as the hearing officer in so doing. It was a matter for the hearing officer to determine the significance, or lack thereof, of the factors emphasized by the carrier in its appeal. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the determination that the claimant had disability from June 15 to December 20, 2000, as a result of his compensable injury, on appeal. Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge