

APPEAL NO. 010963
FILED JUNE 6, 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 19, 2001. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; and (2) the claimant had disability from June 15, 2000, through November 29, 2000. The appellant (carrier) appeals the hearing officer's injury determination on sufficiency grounds, and asserts that the claimant did not have disability in the absence of a compensable injury. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that she sustained damage or harm to her lower back on _____, arising out of and in the course and scope of her employment. See Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate-reviewing tribunal, 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 it 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).

In view of our decision above, the hearing officer did not err in determining that the claimant had disability from June 15, 2000, through November 29, 2000.

We affirm the hearing officer's decision and order.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L.S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge