

APPEAL NO. 010970
FILED JUNE 12, 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 20, 2001. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; and (2) claimant had disability on September 12, 2000, through the date of the hearing. The appellant (carrier) appealed the hearing officer's injury determinations on sufficiency grounds, and asserted that the claimant could not have disability in the absence of a compensable injury. 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 he sustained damage or harm to his lower back on _____, arising out of and in the course and scope of his 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 determined that the claimant was a credible witness, and there was evidence from which the hearing officer could determine that the claimant's allegations were sufficiently corroborated. 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 September 12, 2000 through the date of the hearing.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge