

APPEAL NO. 011013
FILED JUNE 22, 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 12, 2001. With respect to the issue before her, the hearing officer determined that the respondent (claimant) had disability from August 24, 2000, through the date of the hearing. The appellant (carrier) asserts on appeal that considering the evidence presented, the hearing officer could not reasonably conclude that the claimant established that he had disability. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

Disability is defined as the inability to obtain and retain employment at wages equivalent to the preinjury wage due to the compensable injury. Section 401.011(16). Disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In this instance, the hearing officer resolved the conflicts and inconsistencies in the evidence concerning the issue of disability in favor of the claimant and decided that he had sustained his burden of proving that he had disability, as a result of his compensable injury, for the period found. She was acting within her province as the fact finder in so doing. The determination that the claimant had disability from August 24, 2000, through the date of the hearing, April 12, 2001, is supported by the claimant's testimony and the evidence from Dr. B, his current treating doctor. Nothing in our review of the record demonstrates that the hearing officer's disability 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 that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge