

APPEAL NO. 011047
FILED JUNE 28, 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 24, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury; that the date of injury is _____; that the claimant timely reported his injury to his employer; and that he had disability, as a result of his compensable injury, from November 13, 2000, through the date of the hearing. In its appeal, the appellant (carrier) contends that the hearing officer's injury and disability determinations are 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 sustained a compensable injury on _____. That issue 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 sustained a compensable injury. The hearing officer resolved that conflict in favor of the claimant and he was acting within his province as the hearing officer in so doing. Nothing in our review of the record demonstrates that the determination that the claimant sustained a compensable injury 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. Cain.

The success of the carrier's challenge to the disability determination is dependent upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the hearing officer's injury determination, we likewise affirm his determination that the claimant had disability from November 13, 2000, through the date of the hearing on April 24, 2001.

Finally, we briefly consider the carrier's assertion that the hearing officer "improperly placed a burden on the carrier." The carrier relies on a statement in the hearing officer's discussion to support its assertion that the hearing officer improperly placed a burden on

the carrier to prove that the claimant did not injure his knee in the course and scope of his employment. In the challenged portion of the discussion, the hearing officer stated, “[t]he Carrier raised several inconsistencies in the Claimant’s story; however, none were fatal or dispositive.” We cannot agree that this statement by the hearing officer indicates that he improperly shifted the burden of proof to the carrier. Rather, this comment appears to be in the nature of an acknowledgment by the hearing officer that there were some inconsistencies in the claimant’s testimony but that they did not serve to undermine the claimant’s credibility. The significance of the inconsistencies, or, more to the point, the lack of significance to the hearing officer here, was a matter left to his discretion. We perceive no error.

The hearing officer’s decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge