

APPEAL NO. 011094
FILED JULY 03, 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 25, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) did not sustain a compensable injury on _____, and, consequently, respondent carrier (carrier 2) is not liable for benefits; that the claimant did sustain a compensable injury on _____, for which appellant carrier (carrier 1) is liable; that the claimant timely reported the injury to his employer; and that the claimant had disability from March 28, 2000, until April 17, 2000. Carrier 1 urges on appeal that the hearing officer's determinations that the claimant sustained a compensable injury on _____, and that he had disability as a result of the _____, injury are against the great weight and preponderance of the evidence or are not supported by legally sufficient evidence. Additionally, carrier 1 asserts that the hearing officer did not correctly interpret and apply the definition of injury. The claimant urges affirmance. The appeal file contains no response from carrier 2.

DECISION

Affirmed.

Section 401.011(26) defines "injury" as damage or harm to the physical structure of the body. Whether an injury within this definition has occurred is generally a question of fact for the hearing officer to decide and can be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). In the present case, the hearing officer determined that the claimant sustained a compensable injury on March 28, 2000, which resulted in disability. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel 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 them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge