

APPEAL NO. 011116
FILED JULY 02, 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 26, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not have disability as a result of the injury sustained on _____, beginning November 3, 1999, and continuing through April 26, 2001; and that he did not receive postinjury earnings. The claimant appeals the hearing officer's determination and the respondent (carrier) urges affirmance.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not have disability as a result of the injury sustained on _____, beginning November 3, 1999, and running to April 26, 2001; and that he did not receive postinjury earnings. Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer found, among other things, that the claimant obtained an assumed name certificate as sole proprietor of his father's company on November 3, 1999; that the claimant was self-employed and actively involved in the operations of the business and not merely monitoring; and that the claimant's diminished earnings were attributable to the nature of the business and not to his compensable injury. *Compare* Texas Workers' Compensation Commission Appeal No. 982415, decided November 30, 1998.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence (Section 410.165(a)). The hearing officer was not persuaded by the testimony of the claimant or his witness. It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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 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).

The hearing officer's decision is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge