

APPEAL NO. 011133
FILED JUNE 29, 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 (CCH) was held on April 25, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury or have disability. The claimant urges on appeal that these determinations are against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the claimant was not acting within the course and scope of his employment at the time of the injury and therefore, did not sustain a compensable injury or have disability. 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). "Course and scope of employment" means, in pertinent part, "an activity of any kind or character that has to do with and originates in the work, business, trade or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." Section 401.011(12). The claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment and that he had disability as that term is defined in Section 401.011(16). The issues of injury in the course and scope of employment and disability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate-reviewing tribunal, 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. 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 the present case, there is sufficient evidence to support the hearing officer's determination that the claimant was not acting within the course and scope of his employment at the time of the injury and therefore, did not sustain a compensable injury or have disability. Accordingly, the decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge