

APPEAL NO. 011162
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 (CCH) was held on April 24, 2001. The record closed on May 8, 2001. With respect to the issues before him, the hearing officer determined that the claimant did not sustain a compensable injury _____, and thus did not have disability resulting therefrom. The appellant (claimant) appeals and seeks reversal as he believes he can meet his burden of proof on the issues by his testimony and evidence that wasn't introduced at the CCH because he failed to appear. The claimant also argues that his motion for continuance should have been granted and that his ombudsman should have presented all of his evidence at the CCH, despite his absence. Thus, the claimant appeals on sufficiency of the evidence and abuse of discretion grounds. The respondent (carrier) responds and requests that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury _____. The claimant did not appear at the April 24, 2001, CCH and the hearing officer sent a letter (ten-day letter) advising that he should contact the Texas Workers' Compensation Commission (Commission) within ten days of the date of the letter if he wished to appear and present evidence on his behalf. The claimant did not respond to the ten-day letter. Thus, no evidence was presented at the hearing to support the claimant's contention of having sustained a compensable injury.

The hearing officer did not err in determining that the claimant did not have disability as a result of the incident of _____. A finding of disability can only be supported by a finding of a compensable injury and there was no such finding here. See Section 401.011(16).

The claimant's argument that his motion for continuance should have been granted is untenable. The hearing officer did not abuse his discretion in denying the claimant's motion. The motion for continuance was the claimant's fourth, and that it was not filed with the Commission until April 20, 2001, four days before the CCH.

The claimant's argument that the ombudsman should have appeared in his stead and presented the evidence in her possession is also not sustainable. The ombudsman, is an assistant to, and not a representative of, the claimant, and therefore cannot present evidence in the absence of the claimant. The claimant had a duty to appear and introduce evidence at a CCH.

Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); 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.). This tribunal will not disturb the challenged 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; we do not find them so here. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge