

APPEAL NO. 011168
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. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant does not have disability. The claimant appeals the hearing officer's decision and the respondent (carrier) urges affirmance.

DECISION

The hearing officer's decision is affirmed.

The evidence sufficiently supports the hearing officer's determination that the claimant did not sustain a compensable injury in the course and scope of employment on _____, and that the claimant does not have disability. Section 401.011(10) defines a compensable injury as one that arises out of and in the course and scope of employment. The evidence was in substantial conflict concerning whether or not the claimant was struck in the back by a conveyor which was knocked over. The hearing officer was not persuaded by the claimant's testimony or the medical records in evidence that he sustained a compensable injury in the course and scope of employment on _____.

The Appeals Panel has held that the claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 992860, decided February 7, 2000. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer found that the claimant did not establish by a preponderance of the creditable evidence that he was injured in the course and scope of employment on _____, and without a compensable injury there cannot be disability.

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)). 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. 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). After reviewing the medical reports and the other evidence, we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge