APPEAL NO. 011217
FILED JULY 11, 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 16, 2001. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable (left great toe and left foot) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from June 9 through November 7.

The appellant (carrier) appeals, contending that any injury other than a left foot contusion was due to the claimant's preexisting diabetes and that the diabetic ulcer on the claimant's left big toe was unrelated to the work injury. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant is a 60-year-old diabetic "floor man" employed by the employer sugar company. It is undisputed that on _____, an iron bar the claimant was using fell, striking the claimant's left foot and ankle. The claimant reported the incident and continued working that day and the following three days. The claimant testified that after the incident on _____, his foot began swelling and got progressively worse. On June 9, the claimant again reported the injury and was sent to Dr. B. The claimant's theory is that the iron bar incident caused his foot to swell, which in turn caused the skin to crack or split, which became infected and developed a diabetic ulcer, which in turn became gangrenous, and ultimately resulted in the amputation of the left big toe. The carrier's theory is that the claimant had a preexisting diabetic ulcer which became infected, led to the gangrene and amputation, and that the iron bar incident had nothing to do with the infection and amputation.

The medical evidence is conflicting. Dr. B recites a history that the claimant had difficulty walking before the _____, incident and diagnosed a left ankle contusion (accepted by the carrier), and a nonwork-related diabetic foot ulcer. Dr. S, the claimant's treating doctor, had an impression that the "non-healing ulceration" resulted when the foot was hit by the iron bar and the "wound developed when the swelling of the foot was so pronounced that the skin cracked open." There were some other conflicts in the evidence which were argued before the hearing officer.

With the evidence in conflict, it is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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.). 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 carrier's appeal on the disability issue is premised on the fact that the infection and subsequent amputation of the left big toe are not compensable and there was no disability due to the contusion. In that we are affirming the hearing officer's decision that the compensable injury includes the infection and amputation of the left big toe, we also affirm the hearing officer's finding of disability.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge