

APPEAL NO. 011218
FILED JULY 13, 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 May 15, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from September 5, 2000, continuing through the date of the CCH. The appellant (carrier) has appealed these determinations on sufficiency of the evidence grounds. The carrier argued that the hearing officer was biased against the employer and that the hearing officer improperly shifted the burden of proof to the carrier. The claimant has not responded to the appeal.

DECISION

Affirmed.

There was conflicting evidence presented at the hearing regarding the circumstances of the claimant's alleged injury. The claimant testified how the injury occurred, and the carrier's witnesses essentially stated that no one else saw it happen or saw any manifestations of an injury or received any immediate reports of an injury. We do not view the comments of the hearing officer as reflecting a bias against the employer, but rather as setting forth his evaluation of a factor bearing on the credibility and weight he was assigning to the evidence. Further, it is apparent to us that the hearing officer did not shift the burden of proof to the carrier. He found the claimant to be credible and to have satisfied his burden of proof on the issues. This was a classic credibility contest, and the hearing officer was exercising his discretion in evaluating the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge