

APPEAL NO. 011271
FILED JULY 17, 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 May 21, 2001. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on _____; (2) the claimant did not make a binding election of remedies and is not barred from receiving workers' compensation benefits; and (3) the claimant had disability from December 6, 2000, through March 10, 2001. The appellant (carrier) appeals the election-of-remedies determination on sufficiency grounds. No response was filed. The hearing officer's decision with regard to injury and disability was not appealed and is, therefore, final.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not make a binding election of remedies and is not barred from receiving workers' compensation benefits. In Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980), the Texas Supreme Court stated that the election of one legal remedy may constitute a bar to relief under another remedy "when (1) one successfully exercises an informed choice (2) between two or more remedies, rights, or states of facts (3) which are so inconsistent as to (4) constitute manifest injustice." The court stated that the choice of remedies, rights, or states of facts must be "made with a full and clear understanding of the problem, facts, and remedies essential to the exercise of an intelligent choice." We have held that to prove or establish an election of remedies all four prongs of the disjunctive test set out by the Texas Supreme Court in Bocanegra must be met. See Texas Workers' Compensation Commission Appeal No. 980898, decided June 17, 1998. In view of the claimant's testimony in this case, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge