

APPEAL NO. 011283
FILED JULY 24, 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 18, 2001. The hearing officer determined that (1) the respondent (claimant) sustained a compensable injury on _____; (2) the claimant had disability from June 27, 2000, through October 25, 2000; and (3) the claimant's average weekly wage (AWW) is \$735.81. The appellant (carrier) appeals the injury and disability determinations on sufficiency grounds. The claimant urges affirmance. The hearing officer's decision with regard to AWW was the result of a stipulation reached at the hearing and date of injury was not appealed by either party. The hearing officer's decision with regard to AWW is, therefore, final.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to his left knee, arising out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Disability

The hearing officer did not err in determining that the claimant had disability from June 27, 2000, through October 25, 2000. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. There was conflicting evidence with regard to this issue. The hearing officer could infer from the testimony and the medical records that the claimant was unable to obtain employment at wages equivalent to his preinjury wage from June 27, 2000, through October 25, 2000, due to the compensable injury. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge