

APPEAL NO. 011291
FILED JULY 19, 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 22, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease (left shoulder and mid-back on the right side) on _____, and did not have disability. The claimant has appealed these adverse determinations on sufficiency of the evidence grounds. The respondent (carrier) urges the Appeals Panel to affirm the determinations of the hearing officer.

DECISION

Affirmed.

Compensable Injury

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to his left shoulder and mid-back on _____, arising out of and in the course and scope of his employment. See Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer had the benefit of seeing the witnesses as they testified, and was best able to assess their credibility. 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 Appeals Panel, an appellate-reviewing tribunal, 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).

Disability

The hearing officer did not err in determining that the claimant did not have disability. The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge