

APPEAL NO. 011316
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 (CCH) was held on May 16, 2001. The hearing officer resolved the contested issues by determining the following:

1. The appellant (claimant) did not sustain a compensable injury to her cervical spine on _____;
2. The claimant did not have disability; and
3. The claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The claimant appeals the hearing officer's adverse determinations concerning compensable injury and disability. The respondent (carrier) urges affirmance of these determinations.

DECISION

Affirmed.

The claimant asserts on appeal that the hearing officer erred in determining that she did not sustain a compensable injury on _____, and that she does not have disability. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

At the CCH, the claimant testified that she woke up in the morning with tightness to her right shoulder; however, she proceeded to go to work because the tightness did not interfere with her working abilities. (Transcript p. 30.) At the end of the claimant's workday, she dragged two laundry bags across to the laundry room and moved furniture around as she vacuumed the conference room. At about 2:00 a.m., the claimant felt pain to her right shoulder. The MRI revealed a large herniated disc to the left C6-7 level, moderately large herniated disc at the right C5-6 level, small protrusion at the C4-5 level, and borderline spinal stenosis at the C4-5 and C5-6 levels. The claimant testified about, and the medical records in evidence show, a preexisting neck problem.

The hearing officer was not persuaded that the claimant's testimony or the medical reports in evidence were sufficient to demonstrate that the claimant sustained a compensable injury in the course and scope of employment on _____. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence

as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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 to be 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 decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge