

APPEAL NO. 011347
FILED JULY 30, 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 24, 2001. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; that the injury was not caused by the claimant's willful intention to injure himself; and that the claimant did not have disability resulting from the injury. On appeal, the claimant contends that the evidence is insufficient to support the determination that the claimant did not have disability and the finding that the claimant sustained minor damage or harm to the physical structure of his body as a result of the injury on _____. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

A "compensable injury" is defined as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). For purposes of this case, Section 401.011(26) defines "injury" as damage or harm to the physical structure of the body. Whether an injury within this definition has occurred is generally a question of fact for the hearing officer to decide and can be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The hearing officer found that the claimant sustained "minor damage or harm to the physical structure of his body in the course and scope of his employment on _____," and concluded that he sustained a compensable injury. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to 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. 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, 224 S.W.2d 660 (1951).

Disability is likewise a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge