

APPEAL NO. 011354
FILED JULY 25, 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 23, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____, and that the claimant had disability from August 25, 2000, through May 23, 2001, as a result of that injury. The appellant (carrier) has appealed the determinations of the hearing officer on sufficiency of the evidence grounds. The claimant has responded to the appeal and urges that the Appeals Panel affirm the hearing officer's determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury, in the form of an occupational disease, on _____. The claimant had the burden to prove that she sustained damage or harm to the physical structure of her body, in the form of an occupational disease, arising out of and in the course and scope of her 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 determined that the claimant was a credible witness, and that there was medical evidence from which the hearing officer could determine that the claimant's allegations were sufficiently corroborated. 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).

In view of our decision above, the hearing officer did not err in determining that the claimant had disability from August 25, 2000, through the date of the hearing, May 23, 2001.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge