

APPEAL NO. 011363
FILED JULY 27, 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. With the record closing on May 30, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, did not timely notify her employer of the claimed injury, and did not have disability. The claimant appeals the decision, contending that the hearing officer applied an incorrect standard of proof by indicating in his discussion that he did not recognize that the claimant's testimony alone is sufficient to prove the existence of an injury and notice of injury to the employer. The claimant requests that the case be remanded for further proceedings, but does not specify findings of fact to be made on remand. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

A "compensable injury" means "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). The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). "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). Similarly, the claimant bears the burden of establishing that a compensable injury was a producing cause of her disability. Injury and disability determinations can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989).

In the present case, the hearing officer determined that the claimant did not sustain a compensable injury, did not timely report a claimed injury to her employer and did not have disability. Although the hearing officer apparently did not find the claimant's testimony credible, nothing in our review of the hearing officer's decision indicates that he does not recognize that the claimant's testimony alone may be a sufficient basis for establishing injury, disability, and notice to the employer. 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge