

APPEAL NO. 011376
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 7, 2001. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes his current right foot condition, and that he had disability from December 29, 2000, through April 10, 2001. The appellant (carrier) contends that these determinations are against the great weight and preponderance of the evidence. The claimant urges affirmance.

DECISION

Affirmed.

Concerning the extent-of-injury issue, the claimant had the burden to prove by a preponderance of the evidence that his ankle injury of _____, extends to and includes his foot condition. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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. We are satisfied that the disputed findings relating to the extent-of-injury issue are sufficiently supported by the evidence.

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:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge