APPEAL NO. 011424
FILED AUGUST 1, 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 31, 2001. The hearing officer resolved the sole disputed issue by determining that the respondent (claimant) was not a seasonal worker. The appellant (carrier) filed a request for review. The claimant did not respond.

DECISION

Affirmed.

The evidence sufficiently supports the hearing officer's determination that the claimant is not a seasonal worker. Section 408.043(d) defines a "seasonal employee" as an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.5(a) (Rule 128.5(a)) further defines a "seasonal employee" as "an employee who as a regular course of conduct engages in seasonal or cyclical employment which may or may not be agricultural in nature, that does not continue throughout the year." The hearing officer determined that the claimant's regular course of conduct had been full-time employment, rather than seasonal or cyclical employment. The Appeals Panel has held that a worker does not become a seasonal worker simply because he agreed to work during a fixed term that is called a "season." That must be established through reference to the past work history of the employee. Texas Workers' Compensation Commission Appeal No. 002390, decided November 28, 2000, *citing* Texas Worker's Compensation Commission Appeal No. 992884, decided February 7, 2000.

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 the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, 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). We will reverse the factual determinations of a hearing officer only if those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge