

APPEAL NO. 011523
FILED AUGUST 1, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on June 4, 2001, the hearing officer determined that the respondent (claimant) sustained a left knee injury in the course and scope of her employment on _____; that the claimant had disability from December 2 through December 3, 2000, and from December 9, 2000, through April 16, 2001; and that the appellant (carrier) timely disputed the compensability of the claim. The carrier appeals the injury and disability determinations on evidentiary sufficiency grounds, while the claimant urges in response that the evidence is sufficient to warrant our affirmance. The carrier waiver issue has not been appealed and has become final. Section 410.169.

DECISION

Affirmed as reformed.

The hearing officer did not err in reaching the challenged determinations. The claimant testified that on _____, while working at a gas station and convenience store, she went out to get the license plate number of a car she believed was going to steal gas; that the car, whose license plate was covered with a towel, drove off; and that when she pursued the car to get better identification, the car backed up and hit her left knee. She further stated that she was taken by ambulance to an emergency room (ER), where she was treated; that she returned to work on December 4 or 5, 2000, but had to stop working and return to the ER on December 9, 2000, due to the increased pain; that she underwent surgery on her left knee on January 8, 2001; and that she was released to return to work on April 16, 2001. The claimant acknowledged having had prior surgery on her left knee after it was injured in an auto accident, but said she was not having any problems with the knee before she was hit on _____.

The hearing officer states in her decision that she found the claimant's testimony persuasive and credible. 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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). Conclusion of Law No. 4 is reformed to correct the obvious typographical error and change the date of April 16, 2000, to April 16, 2001.

The decision and order of the hearing officer are affirmed as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge