

APPEAL NO. 011537
FILED AUGUST 15, 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 initially convened on March 28, 2001. The hearing was interrupted when the appellant's (claimant) attorney experienced an emergency health problem. The hearing reconvened on May 10, 2001, and although (hearing officer 1) presided at the first hearing, the parties agreed to proceed on May 10, with (hearing officer 2) presiding as hearing officer. After considering the evidence presented on both hearing dates, he determined that the claimant did not sustain a compensable injury to her low back on _____, and did not have disability. The claimant appeals the hearing officer's decision and requests that it be reversed. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant had the burden to prove by a preponderance of the evidence that she sustained a compensable injury on _____, and thereafter had disability and these issues presented the hearing officer with questions of fact to resolve. 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 prove by a preponderance of the evidence that she sustained a compensable injury and, consequently, determined that she did not have disability.

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. 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). We are satisfied that the disputed findings relating to the compensable injury and disability issues are sufficiently supported by the evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge