

APPEAL NO. 011689
FILED SEPTEMBER 10, 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 21, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from August 17, 2000, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The issue of whether the claimant sustained a compensable injury was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Generally, injury and disability may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. See v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's injury determination is against the great weight of the evidence. In so arguing, the carrier emphasizes the same factors on appeal as it had emphasized at the hearing. The significance, if any, of those factors was a matter left to the hearing officer in determining whether the claimant had sustained his burden of proving injury. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and she was acting within her province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the injury determination on appeal. Cain; Pool.

The success of the carrier's disability challenge is dependent up on the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability from August 17, 2000, through the date of the hearing, May 21, 2001.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge