

APPEAL NO. 011757
FILED SEPTEMBER 18, 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 June 29, 2001. With respect to the issues before her, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, and that she did not have disability because she did not sustain a compensable injury. The claimant appealed both the injury and disability determinations on sufficiency grounds. In its cross-appeal, the respondent/cross-appellant (carrier) appealed the hearing officer's Finding of Fact No. 3 that "[d]ue to the claimed injury, the Claimant was unable to obtain or retain employment at her pre injury wages from December 7, 2000 through April 11, 2001 due to her injury," on a sufficiency basis. There is no response to the carrier's cross-appeal in the file from the claimant, but the carrier responded to the claimant's appeal and sought affirmance of the hearing officer's injury and disability conclusions.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on December 7, 2000. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the issue of whether the claimant sustained a new compensable injury or whether she experienced symptoms from an old injury or a preexisting medical condition. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Sufficient evidence supports the hearing officer's determination that the claimant did not sustain a new compensable injury at work on December 7, 2000, particularly the testimony from the occupational nurse on duty on the date of the alleged injury. Nothing in our review of the record reveals that the injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the disability determination. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

As we noted, the carrier has appealed Finding of Fact No. 3, as quoted above. The hearing officer ultimately determined that the claimant did not have disability because she

did not sustain a compensable injury and we have affirmed that determination. As such, the carrier is not aggrieved by the challenged determination. That is, even if we were to find that the hearing officer erred in making that determination, which we do not find, our determination would not affect the outcome of the case. Accordingly, we will not further address the carrier's cross-appeal. See Texas Workers' Compensation Commission Appeal No. 011273, decided July 24, 2001; Texas Workers' Compensation Commission Appeal No. 011170, decided July 9, 2001.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ARGONAUT SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**JOSEPH A. YANKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge