

APPEAL NO. 011834  
FILED SEPTEMBER 12, 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 July 10, 2001. With regard to the issues before him, the hearing officer determined the following:

1. the appellant (claimant) did not sustain a compensable injury on September 19, 2000;
2. the claimant did not have disability;
3. the average weekly wage (AWW) is \$632.80; and
4. the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The claimant appealed the hearing officer's determinations regarding compensability and disability, arguing that the decision of the hearing officer is against the overwhelming weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance. The hearing officer's decision on the AWW and election of remedies issues has not been appealed and has become final.

DECISION

Affirmed.

The claimant testified that she was employed for over eight years as a "roving line operator (ROL)" for the employer. The claimant testified that on \_\_\_\_\_, she worked in the "pack-out section" and that when she lifted spools of fiberglass product, she felt a "pop" in her back and had immediate pain; however, the claimant stated that she completed her 12-hour shift. The claimant testified that she sought medical treatment from a chiropractor on September 23, 2000, and returned to work on October 5, 2000, in a light-duty capacity. The claimant stated that on October 6, 2000, she informed her supervisor that she was having problems with her low back and needed to see a doctor. The claimant stated that she had not returned to work since October 6, 2000. The employer's representatives testified that the claimant was not working in the "pack-out" section on \_\_\_\_\_, and that they did not become aware of the claimant's injury until October 6, 2000.

The evidence sufficiently supports the hearing officer's determinations that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that the claimant did not have disability. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer was not persuaded by the claimant's testimony and by the medical reports in evidence that the claimant sustained a compensable injury and that she had disability.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer determined from the medical records that "a MRI of the lumbar spine dated December 4, 2000, was read to show disc desiccation at L5-S1 level, no evidence of disc bulge or herniation, mild facet hypertrophy at all levels and no evidence of significant impingement on the thecal sac or nerve roots."

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 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).

The hearing officer's decision and order are affirmed.

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

**PRENTICE HALL CORPORATION SYSTEM, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge