

APPEAL NO. 011953
FILED OCTOBER 3, 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 (CCH) was held on July 26, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from September 29, 2000, through the date of the CCH. The appellant (carrier) has submitted a request for review on sufficiency of the evidence grounds. The claimant did not submit a response.

DECISION

Affirmed.

The carrier points out two administrative errors made by the hearing officer in her report. First, the employer's representative was (OS), not (HS). HS was the claimant's direct supervisor, while OS was the overall supervisor at the worksite where the claimant was employed. Second, the hearing officer listed (Mr. G), as a carrier witness. Mr. G was called by the claimant, not by the carrier. In addition, the carrier objected to testimony from Mr. G because his name was not exchanged. The hearing officer did not permit Mr. G to testify as a witness; however, she allowed the claimant to make an offer of proof as to what Mr. G would have said had he been allowed to testify. The hearing officer made it clear that she would not consider the excluded information because it was not in evidence. The administrative errors noted above have no impact on the decision in this case.

The evidence sufficiently supports the hearing officer's determinations that the claimant sustained a compensable injury on _____, and had disability from September 29, 2000, through the date of the CCH. Section 401.011(10) provides that a compensable injury is an injury which arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(16) provides that disability is the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Although there was conflicting evidence presented, the hearing officer was persuaded by the claimant's testimony and the medical records in evidence that the claimant sustained a work-related injury on _____, as he claimed. The medical evidence shows that the claimant was hospitalized for several days and taken completely off work because of that injury.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great

weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge