APPEAL NO. 012137
FILED OCTOBER 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 August 6, 2001, with the record closing on August 8, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable repetitive trauma injury with a date of injury of _____; that the claimant, whose injury occurred out of state, is entitled to all rights and remedies under the 1989 Act; and that the claimant did not have disability as a result of his compensable injury. In his appeal, the claimant contends that the hearing officer's determination that he did not have disability is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance. The self-insured did not appeal the extraterritorial jurisdiction and injury determinations, and they have, therefore, become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability from April 23, 2001, through the date of the hearing, as a result of his _____, compensable injury. 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 disability issue. 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). The hearing officer was not persuaded that the claimant sustained his burden of proving that he was unable to obtain and retain employment at his preinjury wage because of his compensable injury. In noting that the claimant did not meet his burden of proving disability, the hearing officer emphasized that the claimant was working in a light-duty position with the employer, that the claimant's employment was terminated after he refused to take a drug test, and that the claimant testified that he would have been able to continue in the light-duty position had he not been fired. The hearing officer could rely on those factors in determining that the claimant did not have disability even though the claimant's current treating doctor has taken the claimant off work. Nothing in our review of the record reveals that the hearing officer's determination that the claimant did not have disability 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **TYSON FOODS, INC.** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge