

APPEAL NO. 012178
FILED OCTOBER 31, 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 30, 2001. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) sustained a compensable injury on _____, and that he did not have disability as a result of the compensable injury. Each party appealed the determination adverse to its position. The claimant did not respond to the appellant/cross-respondent's (carrier) appeal. The carrier asserted that the claimant's appeal was not timely.

DECISION

Affirmed.

The claimant testified that on _____, he was assisting a customer with her groceries by pushing her shopping cart out to her car. There was a malfunction with the cart causing it to tilt. The claimant reached under the cart with his left arm to support the shopping cart, and said he crushed his left arm in between the shopping cart and a handrail at the store's exit. This account was corroborated by the customer. The medical records address the claimant's injuries as being in the nature of a repetitive trauma injury and include his neck. He was taken off work for five months for these injuries. However, the claimant was firm in his position that he did not injure his neck, and that his arm was injured by the specific accident of _____.

The hearing officer did not err in determining that the claimant sustained a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer determined that the claimant's testimony was credible, and that he sustained his burden of proof on the issue of injury. The hearing officer's decision on the issue of injury is supported by sufficient evidence in the record.

The claimant filed a timely cross-appeal of disability. The hearing officer did not err in determining that the claimant did not have disability as a result of his compensable injury. "Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. The hearing officer determined that the claimant did not show that his inability to work was caused by the specific arm injury, and this is supported by the record.

An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence, as in this case, would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso

1991, writ denied). In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. 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 **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge