

APPEAL NO. 012362  
FILED NOVEMBER 13, 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 September 11, 2001. The hearing officer determined that the respondent (claimant) had disability from January 6, 2000, to February 13, 2001. The appellant (self-insured) urges on appeal that this determination is not supported by the evidence. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The self-insured contends that the hearing officer erred in determining that the claimant had disability from January 6, 2000, to February 13, 2001, because his decreased earnings during that time period were a result of choices made by the claimant and did not result from the compensable injury. Disability is defined as the inability to obtain and retain employment at wages equivalent to the preinjury wage due to the compensable injury. Section 401.011(16). The claimant had the burden of proving, by a preponderance of the evidence, that he sustained disability as a result of a compensable injury. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993; Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993.

We have noted before that, unlike the provisions relating to supplemental income benefits, there is no job search requirement to maintain eligibility for temporary income benefits, which are involved in the present case. Disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. As the trier of fact the hearing officer resolves 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.). As an appellate-reviewing tribunal, 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. 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 determination that the claimant had disability from January 6, 2000, to February 13, 2001, is supported by the claimant's testimony and medical evidence. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RON JOSSELET, EXECUTIVE DIRECTOR  
300 W. 15TH STREET, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge