

APPEAL NO. 012503
FILED DECEMBER 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 September 10, 2001. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) was injured in the course and scope of his employment on _____; that the injury of _____, did not cause disability; and that the respondent/cross-appellant (carrier) timely disputed compensability. The claimant appeals the hearing officer's determination that he has not had disability. The carrier appeals the hearing officer's determination that the claimant was injured in the course and scope of his employment on _____. There is no appeal of the hearing officer's determination that the carrier timely disputed compensability.

DECISION

The hearing officer's decision is affirmed.

COMPENSABLE INJURY ISSUE

Section 401.011(10) defines a "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." The claimant had the burden to prove that he sustained an injury during the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented on this issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determination that the claimant was injured in the course and scope of his employment is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

DISABILITY ISSUE

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden to prove he has had disability as defined by Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The disability issue presented a question of fact for the hearing officer to determine from the conflicting evidence presented on this issue. The hearing officer determined that the claimant's compensable injury did not cause disability. Although there is conflicting evidence on this issue, we conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**STEVEN BISBEE
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge