

APPEAL NO. 012547
FILED DECEMBER 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 was held on September 20, 2001. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on _____, and that the claimant does not have disability. The claimant appealed, arguing that the hearing officer erred in determining there was no compensable injury and no disability. The respondent (carrier) filed a response, urging affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant testified that on _____, he was standing on an elevated platform hanging drapes for a decorating company (employer 1) when the platform collapsed. He hung onto a metal bar some feet above the floor, and felt pain in his shoulders. He reported the incident to employer 1, but did not seek medical attention at that time as he did not think the injury was serious. The claimant continued to work for employer 1 for the next few weeks. He then was employed as a roofer for employer 2 until mid-December. He testified that his shoulder began to hurt as the weather got colder. He did not seek medical attention until December 2000, when he reported his injury to employer 1.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act. The hearing officer was not persuaded by the claimant's testimony or the medical reports in evidence that the claimant sustained a compensable injury. He thought it unlikely that the claimant could have sustained tears in both shoulders in September and continued to work as a roofer until December without medical treatment. The hearing officer determined specifically that "[t]here is no causal relationship between Claimant's current bilateral shoulder problems [and] the incident at work on _____."

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the 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.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 and we do not find them so in this case. 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).

Since we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **RELIANCE NATIONAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**TIMOTHY J. MCGUIRE
633 N. STATE HWY 161
SUITE 200
IRVING, TEXAS 75038.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge