

APPEAL NO. 022147
FILED OCTOBER 10, 2002

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 7, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease or chemical exposure with a date of injury of _____, and that he did not have disability. The claimant appealed the hearing officer's determination on sufficiency grounds. In his appeal, the claimant also challenges venue and contends that the exhibits introduced into evidence at the hearing as his exhibits are not the ones he intended to introduce or the ones he exchanged with the respondent (carrier). The claimant alleges that his attorney "double-crossed" him and changed his exhibits. In its response, the carrier urges affirmance.

DECISION

Affirmed.

We first address the claimant's challenge that venue was not properly placed in the ((City)) field office of the Texas Workers' Compensation Commission (Commission). Venue is set by statute in Section 410.005, which states that a hearing must be held at a site not more than 75 miles from the claimant's residence at the time of the injury. The claimant does not allege that he resided more than 75 miles from the (City) field office of the Commission where the hearing was held. In addition, we note that the claimant did not object to venue at the hearing and, indeed, the claimant, through his attorney, stipulated at the hearing that venue was proper in (City). Section 410.166 provides that an oral stipulation or agreement of the parties that is preserved in the record at the hearing is final and binding. Based upon the claimant's lack of an objection to venue and his stipulation that venue was proper in (City), we dismiss the claimant's venue challenge as having no merit.

In challenging venue, the claimant also asserts that the hearing officer presiding over the case was biased against him. Having reviewed the record, we find no evidence of bias on the part of the hearing officer toward the claimant.

The claimant also contends that his attorney "double-crossed" him with respect to the exhibits he entered on the claimant's behalf at the hearing. The claimant did not raise any concerns about the exhibits offered on his behalf at the hearing. His argument on appeal appears to be in the nature of a malpractice challenge. We have no authority to consider such an argument; however, we would note, that during the hearing, the claimant stated "I have a very good lawyer."

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease or chemical exposure with a

date of injury of _____. The claimant had the burden of proving that he sustained a compensable injury as alleged. The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer determined that the claimant failed to meet his burden of proving that he was exposed to hazardous chemicals or that any such exposure was the cause of his current kidney condition. The hearing officer's determination in that regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge