

APPEAL NO. 022563
FILED NOVEMBER 25, 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 September 11, 2002. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury; (2) the claimed injury does not include the lumbar spine; and (3) the claimant did not have disability. The claimant appeals the determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury and that the alleged injury did not include a lumbar spine injury. The claimant had the burden to prove that he sustained a compensable injury and the nature and extent of his injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant sustained a compensable injury and whether the alleged injury included the lumbar spine. The hearing officer determined that the claimant did not sustain his burden of proof. The hearing officer specifically noted that the claimant's "testimony simply was not persuasive." The hearing officer was acting within her province as the fact finder in making her credibility determination. Our review of the record does not demonstrate that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool; Cain.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge