

APPEAL NO. 033245
FILED JANUARY 27, 2004

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 October 10, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question 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 regarding whether or not the claimant actually performed the task which he asserted caused his injury on the date in question. The claimant testified that he was injured while he and a coworker were lifting an assembly, which weighed approximately 250 pounds. The claimant's coworker testified that the event never occurred, and that employees would never manually lift anything that heavy, instead a backhoe would be used. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. He simply was not persuaded that the claimant sustained his burden of proving that he injured himself while performing his work activities. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is 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 the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did

not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge