

APPEAL NO. 040382
FILED APRIL 13, 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 November 17, 2003, and February 2, 2004. The hearing officer determined that the respondent (claimant) had disability due to the compensable injury of _____, after February 19, 2002, from February 19, 2002, through the date of the hearing. The appellant (carrier) appeals on sufficiency of the evidence grounds. The claimant responds, urging affirmance.

DECISION

Affirmed.

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." Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), 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.). There is sufficient evidence to support the hearing officer's determination of disability and the period thereof. As an appellate-reviewing tribunal, 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).

We affirm the decision and order of the hearing officer.

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

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge