

APPEAL NO. 040391
FILED APRIL 8, 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 January 26, 2004. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include the right leg, and that the claimant did not have disability as a result of his compensable injury. In his appeal, the claimant argues that the hearing officer's extent-of-injury and disability determinations are against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include the right leg. The claimant had the burden of proof on that issue and it presented a question of fact for the hearing officer. There was conflicting evidence presented on the disputed issue. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of proving the causal connection between the incident where he was hit by a forklift at work and the development of the condition in his right leg that eventually necessitated an above the knee amputation. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the hearing officer's determination that the compensable injury does not include the right leg on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The claimant argues that the hearing officer improperly considered an "ordinary disease of life" defense in this case and that he improperly rejected the testimony of Dr. R without reference to any medical evidence to support his decision to do so. We cannot agree that the hearing officer erred in either instance; rather, it appears that the hearing officer was simply commenting that the claimant had not sustained his burden of proving the causal connection between the incident at work and the condition in the claimant's right leg. Such a statement was within the province of the fact finder to make.

Having affirmed the determination that the claimant's compensable injury did not include the right leg, we likewise affirm the determination that the claimant did not have disability in this instance. There is no dispute that the claimant's inability to obtain his preinjury wage after June 19, 2003, was related to the right leg and since that was

determined not to be part of the compensable injury, the claimant did not have disability within the meaning of Section 401.011(16).

The hearing officer's decision and order are affirmed.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica L. Ruberto
Appeals Judge