

APPEAL NO. 040447
FILED APRIL 20, 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 February 2, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these 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 on _____. At the hearing below, the claimant asserted that he sustained an aggravation of his left inguinal hernia while in the course and scope of his employment on _____. The claimant had the burden of proof on this issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer considered the evidence and found that the claimant's left inguinal hernia was a preexisting condition which was not aggravated, enhanced or worsened by the claimant's work on _____. Contrary to the claimant's assertion, nothing in our review indicates that the hearing officer applied an improper standard in reaching this determination. Additionally, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In his appeal, the claimant appears to assert that his preexisting inguinal hernia is, itself, an occupational disease injury which arose during the course and scope of his employment prior to _____. The claimant did not raise this argument at the hearing below. Accordingly, we will not address it for the first time on appeal.

The hearing officer did not err in determining that the claimant did not have disability. 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 decision and order of the hearing officer is 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

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge