

APPEAL NO. 040623
FILED MAY 10, 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 March 1, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability resulting from the claimed injury. The claimant appealed, arguing that the determinations of the hearing officer are not supported by any evidence or alternatively are so against the great weight and preponderance of the evidence that they are clearly wrong and manifestly unjust. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed as reformed.

We reform the hearing officer's decision to reflect that Carrier's Exhibit No. 5 was not admitted into evidence.

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 the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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). We find no merit in the claimant's contention on appeal that the hearing officer reached her decision based on her own deductions outside the evidence. In her Statement of the Evidence the hearing officer noted that the claimant was unable to credibly explain inconsistencies between his testimony and medical records, his testimony and payroll records, and his testimony and his earlier representations to others. In this instance, the hearing officer simply did not believe the claimant's testimony and the evidence tending to demonstrate that he sustained damage or harm to the physical structure of his low back while manually separating the forks of a forklift as claimed. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury 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 that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing

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

We affirm the decision and order of the hearing officer.

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

**ROBERT SIDDONS
11612 RM 2244, BUILDING 1, SUITE 200
AUSTIN, TEXAS 78733.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge