

APPEAL NO. 040681
FILED MAY 25, 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 4, 2004. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, that he did not have disability, and that the respondent/cross-appellant (carrier) did not waive its right to contest compensability in this instance pursuant to Sections 409.021 and 409.022. In his appeal, the claimant 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 carrier urges affirmance. In its cross-appeal, the carrier challenges the hearing officer's factual finding that "[d]ue to the claimed injuries, Claimant has been unable to obtain and retain employment at his pre-injury wages from April 30, 2003, through the date of the hearing." The claimant did not file a response to the carrier's cross-appeal.

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 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). In this instance, the hearing officer simply did not believe the claimant's testimony and evidence tending to demonstrate that he was injured lifting a large cable at work. 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 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. 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.

In its cross-appeal, the carrier argues that the hearing officer's factual finding that the claimant was unable to obtain his preinjury wage from April 30, 2003, through the

date of the hearing is against the great weight of the evidence. The hearing officer was acting within his province as the fact finder in finding that the claimant's herniated disc prevented the claimant from working for the period found. Our review of the record does not demonstrate that the challenged finding is so contrary to the overwhelming weight of the evidence as to compel its reversal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge