

APPEAL NO. 041091
FILED JUNE 17, 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 April 14, 2004. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, and that because the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed the hearing officer's injury and disability determinations based on sufficiency of the evidence grounds. The respondent/cross-appellant (carrier) responded, urging affirmance. The carrier filed a cross-appeal, arguing that Conclusion of Law No. 3 contains a clerical error. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

Conclusion of Law No. 3 states that the "Claimant did sustain a compensable injury." Even the claimant's appeal recognizes that this appears to be a typographical error, and we agree. Based upon our review of the hearing officer's discussion of the record and Findings of Fact, we conclude that Conclusion of Law No. 3 contains a clear clerical error and reform it to read that the claimant did not sustain a compensable injury.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In the instant case, the claimant and the carrier presented sharply conflicting evidence as to whether the claimed injurious event of _____, ever occurred. The hearing officer stated that she found the carrier's evidence to be more credible and persuasive. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). With no compensable injury found, there is no basis upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16). 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). After reviewing the record, we find sufficient evidence to support the injury and disability determinations.

The decision and order of the hearing officer are affirmed as reformed herein.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge