

APPEAL NO. 041290  
FILED JULY 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 April 29, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of his employment on \_\_\_\_\_, and because the claimant had not sustained a compensable injury the claimant did not have disability.

The claimant appealed on sufficiency of the evidence emphasizing evidence he believes supports his position. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

As the hearing officer states in the Background Information the testimony and evidence was “diametrically opposed on most pivotal points.” The claimant testified that he was employed by the well service employer on \_\_\_\_\_, to pick up scrap metal in the yard and injured himself at that time. The employer testified that the claimant only worked three days (on December 4, 5, and 16, 2003) and was not working for the employer on \_\_\_\_\_; that the employer did not tell the claimant to pick up scrap metal; that the employer is not in the scrap metal business; and that statements from other witnesses indicate that the claimant hurt his back on his own trying to pick up a bath tub to sell for scrap metal. The hearing officer clearly believed the carrier’s evidence rather than the claimant’s.

The questions of whether the claimant sustained a compensable injury and whether he had disability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had 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 was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the claimant had not sustained a compensable injury, the claimant could not by definition in Section 401.011(16) have disability. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are 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 R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge