

APPEAL NO. 041345
FILED JULY 16, 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 May 7, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and, because the claimant did not sustain a compensable injury, the claimant did not have disability.

The claimant appeals, basically on sufficiency of the evidence and asserts that his attorney "could have subpoenaed" a witness and other documents. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a night stocker, alleges he sustained an injury to his left wrist and low back in one or two incidents which occurred in the early morning of _____. Most of the evidence is in dispute including whether the claimant was even working on the day and at the time in question. The hearing officer, in his Background Information, comments that the claimant's testimony "was not credible" and gives an example of why that was so.

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). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Regarding the claimant's complaint that his attorney did not subpoena a witness or other documents, the Appeals Panel does not have authority to consider or review complaints about an attorney's tactics or performance in a case.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge