

## APPEAL NO. 002044

On August 2, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not have disability from September 18, 1997, through March 1, 1998, as a result of the injury sustained on \_\_\_\_\_. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. The respondent (self-insured) requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

The hearing officer advised the claimant of his right to be represented by an attorney, his right to be assisted by an ombudsman, and his right to meet with an ombudsman. The claimant told the hearing officer that he did not want to be represented or assisted or to meet with an ombudsman. The claimant signed a form indicating that he had elected not to meet with an ombudsman.

We find no merit in the claimant's contention that the self-insured did not provide workers' compensation coverage for the period of September 18, 1997, to March 1, 1998, because the parties stipulated that at all times pertinent to the claimant's claim, the self-insured provided workers' compensation coverage through self-insurance. It may be that the claimant is actually contending that the self-insured did not pay him income benefits from September 18, 1997, through March 1, 1998, which is the period of time in dispute.

We find no merit in the claimant's contention that venue was not proper in the (city) Field Office because the parties stipulated that venue was proper in that office.

There was some confusion at the CCH regarding the numbering of the claimant's exhibits because of the order in which the claimant stapled his exhibits together. However, it is clear from the record that the carrier objected to the disability decision of the Social Security Administration (SSA) on the grounds that it was not exchanged prior to the CCH. The hearing officer listened to the arguments of the parties and ruled that the SSA decision had not been timely exchanged and excluded it from evidence. We conclude that the hearing officer did not abuse his discretion in excluding the SSA decision based on a failure to timely exchange that exhibit. In addition, since the hearing officer's decision on the disability issue had to be based on the definition of disability in Section 401.011(16) (the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage), the SSA disability determination would not necessarily be dispositive of the disability issue before the hearing officer.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. A medical report states that the claimant was injured on that date when he

fell down stairs. The parties did not stipulate as to the extent of the compensable injury. A medical report states that the compensable injury was to the claimant's right shoulder, knee, and foot.

The claimant was initially treated for his compensable injury by Dr. C and on August 29, 1997, Dr. C released the claimant to unrestricted work. Dr. C referred the claimant to Dr. M, who wrote in January 1998 that an arthrogram of the claimant's right shoulder revealed no evidence of a rotator cuff tear and that a CT scan of the claimant's right shoulder was essentially normal. Dr. M diagnosed the claimant as having right rotator cuff tendinitis and arthritis of the right shoulder.

Dr. F, wrote in March 1999 that he examined the claimant on March 6, 1998, for the claimant's work-related injury; that he determined that the claimant was unable to participate in any gainful activities because of his injuries; that he took the claimant off work; that the claimant had not improved to his preinjury status; and that the claimant still cannot pursue any gainful activities.

The claimant testified that he has had disability since August 1997 and that all of his doctors say he is disabled.

The issue to be resolved at the CCH was whether the claimant had disability from September 18, 1997, through March 1, 1998, as a result of the compensable injury sustained on \_\_\_\_\_. The claimant had the burden to prove that he had disability as defined by Section 401.011(16) for the time period in dispute. The hearing officer found that from September 18, 1997, through March 1, 1998, the claimant's injury did not cause the claimant to be unable to obtain and retain employment at wages equivalent to the claimant's preinjury wage, and the hearing officer concluded that the claimant did not have disability from September 18, 1997, through March 1, 1998, as a result of the injury of \_\_\_\_\_. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge