

APPEAL NO. 010616

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 February 27, 2001. The hearing officer resolved the disputed issues by determining that the appellant's (claimant) compensable injury of _____, did not extend to the cervical or lumbar spine or to the soft tissue areas of the cervical and lumbar areas of the body. The hearing officer further determined that the claimant did have disability as a result of the compensable injury and that her disability lasted from September 15, 2000, to October 31, 2000. The claimant appeals on sufficiency of the evidence grounds and seeks reversal. The respondent (self-insured) responds and urges that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to her cervical or lumbar spine or to the soft tissue areas of the cervical and lumbar areas of her body. Evidence in the record supporting the hearing officer include medical records showing a 1998 on-the-job injury to the claimant's neck and back reported by the claimant to be the cause of her back conditions, and a referral from the claimant's treating doctor, made before the claimant's compensable injury, for her to see a neurologist for her neck and back conditions. The claimant testified that her previous injury was not at all like the one at issue and that her neck and back problems were different before her compensable injury than they are now.

The hearing officer did not err in determining that the claimant had disability resulting from her compensable injury from September 15, 2000, through October 31, 2000. The claimant's testimony supports this period of disability in that she was paid in full, a teacher's assistant, through to the beginning of the 2000 fall semester. In addition, the medical records show, and the claimant testified, that she had surgery for the compensable injury to her left knee, on _____, and was released by her knee surgeon by, at the latest, the end of October. The claimant then said that the doctor who released her did not take her continuing knee problems into account and that she was further disabled by her back injuries. However, because the hearing officer found that the claimant's compensable injury did not extend to the lumbar and cervical portions of her spine or to the surrounding soft tissue, the claimant's arguments concerning further disability because of her back injuries have no support.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d

701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge