

APPEAL NO. 010993  
FILED JUNE 20, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 6, 2001, with the record closing April 6, 2001. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury sustained on \_\_\_\_\_, did not extend to and include his depression, sexual dysfunction, hemorrhoids, cervical injury, or disfigurement of his right nostril. In addition, the hearing officer resolved that the claimant did not have disability after October 31, 2000. The claimant appeals and seeks reversal on sufficiency grounds. The claimant also complains of errors and omissions within the decision and order that allegedly have substantive effect averse to the claimant. The respondent (carrier) responds and urges affirmance in all respects of the hearing officer's decision and order.

DECISION

The hearing officer's decision and order is affirmed, as reformed.

The hearing officer did not err in deciding that the claimant's compensable injury sustained on \_\_\_\_\_, did not extend to and include his depression, sexual dysfunction, hemorrhoids, cervical injury, or disfigurement of his right nostril. The hearing officer found that the claimant's nose was not disfigured, in comparing the claimant's appearance in his driver's license photograph, taken before the accident, and that at the CCH. In addition, the hearing officer decided that the claimant did not prove by a preponderance of the evidence that his depression was a result of his compensable injury or that he had sexual dysfunction. With respect to the claimant's alleged cervical injury, the hearing officer relied upon negative MRI reports and the fact that the claimant did not complain of cervical pain for months after his accident.

The hearing officer did not err in determining that the claimant did not have disability after October 31, 2000. There were medical records showing that the claimant had been released to work before then and did occasionally work for his cousin. The hearing officer found that the claimant was able to obtain "or retain" employment at wages equivalent to his preinjury average weekly wage at all times subsequent to October 31, 2000. See Section 401.011(16).

There are two clerical errors that we correct here. The "Attorney Fees" portion of the decision and order is hereby reformed to read "Both the claimant and the carrier were represented by an attorney at the hearing. A separate order on attorney fees may be issued." Conclusion of Law No. 2 is hereby reformed to read "Venue was proper in the (city 1) Field Office," to conform to the stipulation.

The parties presented conflicting evidence on the issues in dispute. Pursuant to Section 410.165(a), 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 disturb the challenged 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).

For these reasons, we affirm the decision and order of the hearing officer, as reformed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge