

APPEAL NO. 011021
FILED JUNE 25, 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 was held on April 4, 2001, with the record closing on April 12, 2001. The hearing officer determined that respondent (claimant) had disability from July 17, 2000, through April 4, 2001. Appellant (carrier) appealed this determination on sufficiency grounds. Carrier also complained of the denial of requests for depositions on written questions and asserts that it was ordered to pay double temporary income benefits (TIBs). Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer abused his discretion in refusing to permit a deposition on written questions to Dr. G, the designated doctor. Carrier stated that it sought the deposition on written questions to question Dr. G about claimant's work ability, because Dr. G is not aware of claimant's job description. In a January 3, 2001, letter, Dr. G stated that claimant could perform light-duty work that does not involve prolonged walking or standing. The job description, contained in the record, states that "sustained periods of standing" are involved. The carrier fails to provide any explanation of how providing the job description could have affected the designated doctor's opinion. From Dr. G's January 3, 2001, letter, the hearing officer could find that Dr. G sufficiently clarified whether he believed claimant could return to his job. We perceive no abuse of discretion.

Carrier contends that the hearing officer abused his discretion in refusing to permit a deposition on written questions to Dr. S, who treated claimant before Dr. M. Carrier sought to depose Dr. S on written questions for the same reason: it asserted that Dr. S was not aware of claimant's job duties. However, in January 2001, Dr. S stated, "Due to the severity of [claimant's] condition, he is unable to work at any capacity at this time." We conclude that giving claimant's job description to Dr. S would not have provided additional relevant evidence regarding the issue of disability. We conclude that the hearing officer did not abuse his discretion. Even were we to find error in denying the carrier's requests regarding Dr. S and Dr. G, given the state of the record, we conclude any error would be harmless error.

Carrier contends that the hearing officer erred in ordering it to pay TIBs. It asserts that by determining that claimant had disability, the hearing officer determined that it must pay TIBs twice, noting that it had been paying TIBs to claimant voluntarily and pursuant to an interlocutory order. An interlocutory order for the payment of TIBs dated December 8, 2000, is in the record. We note that the hearing officer's decision stated that "accrued but unpaid income benefits, if any, are payable in a lump sum with interest." If carrier has already paid some of claimant's income benefits, then those income benefits are not "unpaid" or due. Carrier is not liable for double TIBs.

We have reviewed the complained-of disability determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. There was a long period of disability in this case, given the injury. However, given the medical reports noting the severity of the injury, the determination is affirmable. We conclude that the hearing officer's determination is not 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).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge