

APPEAL NO. 011131
FILED JULY 09, 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 24, 2001. With respect to the issue before him, the hearing officer determined that the appellant (claimant) did not have disability from November 24, 2000, to the date of the hearing. In her appeal, the claimant argues that the hearing officer's disability determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The company for which the claimant worked was in the process of merging with another company. As a result, the claimant was vying for her position with an employee from the other company. After having her first interview, the claimant tendered a request for offer of termination dated October 10, 2000, which was accepted by the employer. The claimant continued to do her regular job as an accounting clerk until October 23, 2000.

Conflicting evidence was presented as to the claimant's medical condition and whether or not she voluntarily quit, or was laid off. The hearing officer determined that the claimant's compensable injury did not prevent her from being able to perform her preinjury job duties between the date of the injury and the date of the hearing. He further determined that the claimant voluntarily resigned and that the compensable injury did not render the claimant unable to obtain and retain employment at her preinjury wages. "Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. Our review of the record does not reveal that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Therefore, no sound basis exists for us to disturb the disability determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge