

APPEAL NO. 011306
FILED JULY 17, 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 May 22, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy; and that the claimant had disability from January 19, 2001, through February 26, 2001. On appeal, the claimant contends that the hearing officer erred in establishing the ending date of disability and urges that disability continues through the present time. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Disability is defined as the inability to obtain and retain employment at wages equivalent to the preinjury wage due to the compensable injury. Section 401.011(16). The claimant has the burden of proving, by a preponderance of the evidence, that he sustained disability as a result of a compensable injury. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993; Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993. Disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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 and inconsistencies in the evidence and decides what facts the evidence has established. The hearing officer's determination that the claimant had disability from January 19, 2001, through February 26, 2001, is supported by the evidence. Nothing in our review of the record demonstrates that the hearing officer's disability determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The disability determination does not affect the claimant's entitlement to all health care reasonably required by his compensable injury as and when needed. Section 408.021(a)

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge