

APPEAL NO. 011346
FILED JULY 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 May 23, 2001. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, did not extend to the cervical and lumbar spine; and (2) the claimant had disability for the compensable injury of _____, from _____ through _____. The claimant appeals the determinations on sufficiency grounds. The claimant also asserts that the hearing officer erred in failing to reform the express wording of the first issue in accordance with the parties' agreement at the CCH. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Failure to Amend the Issue

As stated above, the claimant asserts that the hearing officer erred in failing to reform the express wording of the first issue in accordance with the parties' agreement at the CCH. The issue provided on the decision and order is as follows: "Does the compensable injury of _____ extend to the claimant's lumbar and cervical *sprain*?" At the CCH, the parties agreed to reform the issue to read, "Does the compensable injury of _____ extend to the claimant's lumbar and cervical *areas*?" The claimant asserts that the issue was amended to allow consideration of possible injuries to the cervical and lumbar spine, in addition to a sprain type injury. Because the hearing officer's decision and order addresses the claimed injuries to the cervical and lumbar spine and is not limited to consideration of a cervical and lumbar sprain, we conclude that the hearing officer's failure to rephrase the issue constituted harmless error.

Compensable Injury

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to the cervical and lumbar spine. The claimant fell at work and sustained a diagnosed fracture of the rib when he hit a high peg in the floor. The rib injury was accepted by the carrier.

The claimant had the burden to prove that he sustained damage or harm to his neck or low back, arising out of and in the course and scope of his employment on _____, or that the claimed injuries naturally resulted from the compensable injury. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991; Section 401.011(26); see Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section

410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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 (Tex. 1986). Although this is plainly a case where different inferences could be drawn from the evidence, that which supports the decision is more than a mere scintilla.

Disability

The hearing officer did not err in determining that the claimant had disability from the compensable injury from _____ through _____. The claimant asserts that he had disability from March 13, 2000 through the date of the hearing. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. Upon review of the evidence, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge