

APPEAL NO. 011653
FILED SEPTEMBER 4, 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 June 20, 2001. The hearing officer found that the Texas Workers' Compensation Commission abused its discretion in approving a change of treating doctor. She found that the respondent's (claimant) average weekly wage was \$741.69. Finally, she determined that the claimant had disability from her compensable injury for the period from October 16, 2000, through the date of the CCH.

The appellant (carrier) has appealed the disability finding, arguing that there was evidence that the claimant could have continued to do her job. The carrier also argues that the claimant was taken off work by the doctor that the hearing officer found was impermissibly sought for the purpose of seeking a new medical report. There is no response from the claimant or appeal of the other issues.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant had disability from October 16, 2000, through the date of the CCH. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Testimony on incapacity need not be limited to experts; a fact finder may reasonably infer incapacity from circumstantial evidence or the competent testimony of lay witnesses. Green v. Texas Workers' Compensation Insurance Facility, 993 S.W.2d 839, 844 (Tex. App.-Austin 1999, writ denied).

The claimant fell onto her buttocks and left wrist when a chair went out from under her, hurting her low back as well as her wrist. She worked as an accountant for a nonprofit organization and was characterized by the employer's witness as a good worker. The evidence on disability conflicted. On one hand, a doctor for the carrier examined the claimant and said she could work without restrictions effective December 2, 2000. On the other hand, there was evidence from the claimant's treating doctors (including the disallowed doctor) that the claimant was not able to work. The claimant testified that her back condition had remained the same since the day she injured it, and that she had numbness and needle-like pain. She said she had been unable to do any work since the injury.

There was no evidence that the employer made a bona fide offer of employment such that an offered wage could be imputed to the claimant, although there was general testimony from the human resources director of her subjective belief that the claimant could have continued to do her job. Although the hearing officer may not have accorded much weight to the disallowed treating doctor's reports, she could still choose to believe the claimant's testimony in light of the documented back and wrist injury.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

The true corporate name of the insurance carrier is **AMERICAN EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
SUITE 500
DALLAS, TEXAS 75206.**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge