

APPEAL NO. 011759
FILED SEPTEMBER 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 (CCH) was held on July 2, 2001, with the record closing on July 13, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____, and that the claimant had disability from December 6, 2000, through the date of the CCH.

The appellant (carrier) appealed, contending that the claimant had not sustained a back injury and therefore did not have disability, or, if the claimant had an injury, the employer had made an offer of light duty the claimant could have performed had he not been terminated. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, who had some background in industrial safety, was hired as a "fire watch" and was working the night shift, 6:00 p.m. to 6:00 a.m. The claimant testified that on the evening of _____, he was working with a coworker pulling some pipe apart to remove a coil when he injured his low back. The mechanics of what the claimant was doing and whether it could cause an injury were disputed. Statements from the coworker and a supervisor indicate an incident occurred. Depending on the testimony, the claimant reported, or again reported, his injury on December 4, 2000, and the employer took the claimant to Dr. G that day. Dr. G noted that the claimant "states he knows he has a disc herniation because of his pain." Dr. G ordered an MRI, did a drug screen, referred the claimant to Dr. R, an orthopedic specialist, and released the claimant back to duty without restrictions. The evidence regarding the employer's offer of employment is disputed (the claimant said the restriction portion was blank when he signed it), but it appears undisputed that it had not been signed by the employer's superintendent. The MRI performed on December 4, 2000, showed a right lateral disc herniation at L4-5 compressing the L4 nerve roots, and a smaller disc protrusion at L3-4. Dr. R's review of the MRI was that it "showed a mild bulge at L3-L4 on the left and a slightly larger bulge at L4-L5." Dr. R had an impression of "muscular back pain with radicular symptoms on the left side." The claimant was terminated on the evening of December 5, 2000, because the drug screen had come back positive for cocaine metabolites. The claimant subsequently saw his own doctor, who took the claimant off work.

The evidence was conflicting and depends largely on which version of the evidence one believes. In that regard, the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v.

Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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

**CHARLES HARDY
3535 TRAVIS, SUITE 300
DALLAS, TEXAS 75204.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge