

APPEAL NO. 011871
FILED SEPTEMBER 10, 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 17, 2001. The only issue before the hearing officer was:

Did the Claimant [respondent] have disability resulting from the injury sustained on _____ from 11/30/00 to the date of the hearing?

Regarding that issue, the hearing officer determined that the claimant sustained a compensable injury on _____, and that the claimant had disability from May 10, 2001, through the date of the CCH, July 17, 2001.

The appellant (carrier) appealed, contending that the hearing officer had no jurisdiction to determine the issue of compensability and that the hearing officer erred in finding disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

In a prior CCH, which resulted in Texas Workers' Compensation Commission Appeal No. 002931, decided January 30, 2001, the Appeals Panel affirmed another hearing officer's decision that the claimant sustained a "compensable inguinal hernia" injury on _____, and that the claimant had disability from _____ through November 29, 2000. The carrier has represented that decision has been appealed to a district court where it is currently pending. We note that pursuant to Section 410.205(b), the decision of the Appeals Panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G of Section 410 of the 1989 Act. Consequently, we find no error in the hearing officer's recitation that the claimant sustained a compensable injury on _____, and hold that the hearing officer was merely reciting the affirmed decision of a compensable injury as a prerequisite to a finding of disability.

Most of the CCH dealt with whether or not the claimant was working for another company or was leasing his pick-up truck to that company after November 29, 2000. The hearing officer found that the claimant's testimony about the truck leasing was not credible and found that the claimant received money for personal services (and did not have disability) from November 30, 2000, through May 9, 2001. That finding has not been appealed.

It is undisputed that the claimant had surgery to repair his right inguinal hernia on May 10, 2001. In evidence are a series of Work Status Report (TWCC-73) forms taking the claimant off work "through 7/18 [2001]." The claimant testified at the CCH that he was able to work and was or had negotiated for employment with another employer. The claimant testified that the surgeon had released him to return to work the week prior to the

CCH and he was waiting on the treating doctor's release to return to work. The evidence is unclear whether the claimant continued to receive income from the company that was "leasing" his pick-up truck while he was recuperating from the hernia surgery.

Disability is defined in Section 401.011(16) as the "inability because of a compensable injury to obtain and retain employment" at the preinjury wage. The hearing officer's determination that the claimant had disability, as defined in Section 401.011(16), due to the inguinal hernia surgery and recuperation time was based on the claimant's testimony and the TWCC-73 in evidence. The hearing officer's determination is supported by the evidence.

The hearing officer weighed the credibility of the evidence and her determination on the issue before her is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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

T. J. FIELDS
5910 N. CENTRAL EXP. #500
DALLAS, TEXAS 75206.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge