

APPEAL NO. 011908
FILED OCTOBER 2, 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 July 18, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; that he had resulting disability from December 8, 2000, through the date of the hearing; that the claimant did not have good cause for his failure to appear at the first scheduled hearing of May 2, 2001; and that the claimant's average weekly wage (AWW) is \$329.78. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In addition, the carrier argues that even if the claimant had disability, it did not continue through the date of the hearing because the claimant purportedly reached maximum medical improvement (MMI) on January 31, 2001. Alternatively, the carrier contends that if disability did not end as of that date, it ended when the claimant returned to work June 10, 2001. Neither party appealed the AWW determination or the determination that the claimant did not have good cause for his failure to appear at the initial hearing and, as such, those determinations have become final pursuant to Section 410.169. There is no response in the file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury in the form of an occupational disease on _____. Whether the claimant sustained a compensable injury was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the issue of whether the claimant sustained a compensable occupational disease injury as a result of performing repetitively traumatic activities at work. The hearing officer resolved those conflicts in favor of the claimant. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Therefore, no sound basis exists for us to disturb the injury determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The success of the carrier's disability challenge is largely dependent up on the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability from December 8, 2000, through the date of the hearing, July 18,

2001. The hearing officer's determination that the claimant's disability continued after he returned to work for another employer is supported by the evidence that the claimant's hourly wage is lower at the job he started on June 10, 2001, and that he is working fewer hours per week. We likewise find no merit in the assertion that the claimant's disability ended on January 31, 2001, when a carrier-selected doctor certified that the claimant had reached MMI. Initially, we note that although a carrier's liability for temporary income benefits ends at the date of MMI, disability does not necessarily end on that date. See Texas Workers' Compensation Commission Appeal No. 992069, decided October 28, 1999, and the cases cited therein. In addition, we note that the issue of MMI was not before the hearing officer and that the claimant has not yet been determined to have reached MMI.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is :

**CT CORPORATION SYSTEMS
350 N. ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge