

APPEAL NO. 011986
FILED SEPTEMBER 26, 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 18, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable neck injury on _____, and has had continuing disability since February 5, 2001, through the date of the hearing.

The appellant (carrier) has appealed, asserting that the claimant did not prove disability for the period after he completed the work hardening period until the time of the CCH. The respondent (claimant) argues that sufficient evidence was presented at the CCH to support the Decision and Order of the hearing officer.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable neck injury on _____. Prior to the incident in which claimant sustained his compensable injury he had undergone spinal surgery. The claimant testified that his employment was terminated a few days after he requested approval for time off to attend a work hardening program prescribed by his doctor on February 5, 2001, which would last four weeks. He further testified that he has not worked since February 5, 2001, because "getting back to health is taking 100% of [his] time." The claimant testified that no additional physical therapy has been prescribed but that pain management treatment has been prescribed and he is continuing treatment.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The 1989 Act does not "impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably available and fully compatible with his training, experience and qualifications." Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. However, the 1989 Act "is not intended to be a shield for an employee to continue receiving temporary income benefits where taking into account all of the effects of the injury, he is capable of employment but chooses not to avail himself of reasonable opportunities or, where necessary, a bona fide offer." Appeal No. 91045.

In the case before us, the hearing officer apparently found credible the claimant's testimony that he was unable to work after his employment was terminated because of his severe neck pain and the treatment he was undergoing. The 1989 Act provides that the

hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge