

APPEAL NO. 011996
FILED OCTOBER 9, 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 30, 2001. With regard to the only issue before her, the hearing officer determined that the appellant (claimant) had disability from January 2, 2001, through March 12, 2001, but that the claimant did not have disability from March 13, 2001, through the date of the CCH.

The claimant appeals, contending that the hearing officer "improperly asserts defenses on the carrier's [respondent] behalf" and added issues of sole cause, extent of injury, and compensability not before the hearing officer. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a shuttle van driver when he was involved in a one-vehicle accident on _____, when he lost control of his vehicle. The parties stipulated that the claimant sustained a compensable (left wrist and low back) injury in the accident. The claimant went to the emergency room and was subsequently seen by Dr. SP. As the hearing officer notes, no narrative medical reports or progress notes, from Dr. SP, other than off-work slips and Work Status Report (TWCC-73) forms are in evidence. Dr. SP placed the claimant on light duty on November 21, 2000. The testimony established that the employer, through another concern, had a light-duty program where an injured employee would be sent to the other business for light duty receiving his or her full salary. Dr. SP, at one point, took the claimant off work but then returned him to light duty. According to the claimant's testimony, at the claimant's urging, Dr. SP released the claimant to full duty on December 27, 2000. On the next working day, January 2, 2001, when the claimant reported to work, the claimant was discharged for reckless driving. On January 4, 2001, the claimant returned to Dr. SP, who again placed the claimant on light duty with physical therapy three times a week.

The claimant was referred to Dr. S for evaluation and Dr. S, in a report of January 17, 2001, noted that the claimant "has had back surgery in 1995," noted an MRI "shows chronic changes at multiple levels including a herniated disk at L3-L4" and that most of the claimant's "complaints are subjective." The claimant was seen by Dr. E on referral from Dr. SP. Dr. E noted the 1995 surgery, a December 1, 2000, MRI, and suggested surgery but noted that the claimant wanted to continue conservative care. Dr. SP continued the claimant on light duty through March 12, 2001.

The claimant requested a change of treating doctor on an Employee's Request to Change Treating Doctors (TWCC-53) from Dr. SP to Dr. BP, a chiropractor, on March 15, 2000, approved on March 27, 2000. A TWCC-73 from Dr. BP released the claimant to light

duty on March 30, 2001. Subsequent narrative reports from Dr. BP deal only with a maximum; medical improvement date and the impairment rating.

The hearing officer, in her Statement of the Evidence, commented that it was "fairly clear" that the claimant has multi-level lumbar stenosis "caused by osteoarthritis, an ordinary disease of life" not caused by the compensable accident and that Dr. SP's "release [to light duty] on February 8, 2001 reflects a release through March 12, 2001 pending surgery for stenosis" and by that date the claimant's "lumbar sprain had apparently resolved." The only issue before the hearing officer was whether the claimant had disability. Consequently, the hearing officer's commentary that the claimant's osteoarthritis was a disease of life and that "the lumbar sprain had apparently resolved" could support the hearing officer's determination on the issue before her but is not to be considered dispositive as to the extent of injury, an issue which was not before the hearing officer.

The hearing officer found that the claimant had disability, as defined in Section 401.011(16) from January 2, 2001, through March 12, 2001, when he was released to light duty by Dr. SP and the hearing officer believed the claimant's compensable injury had resolved. 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.). Another fact finder may have reached a different conclusion or drawn different inferences from the evidence. (Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.)), but that fact does not warrant a reversal of this case. 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).

We find no basis for the claimant's allegations that the hearing officer asserted defenses on the carrier's behalf or added issues not before her. Clearly the hearing officer found that disability ended when the claimant changed treating doctors from Dr. SP to Dr. BP.

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge