APPEAL NO. 012042
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 was held on July 23, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that his compensable injury extends to and includes disc herniations at L4-5 and L5-S1; and that he had disability, as a result of his compensable injury, from _____ to October 27, 2000; from December 18 to December 20, 2000; and from January 22, 2001, through the date of the hearing. In addition, the hearing officer determined that the appellant's (self-insured) contest of compensability was not based upon newly discovered evidence; thus, it is not permitted to reopen compensability. In its appeal, the self-insured asserts error in each of those determinations. The claimant's response urges affirmance.

DECISION

Affirmed.

The issues of whether the claimant sustained a compensable injury, whether the compensable injury included disc herniations at L4-5 and L5-S1, and whether the claimant had disability were questions 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). Generally, injury and disability may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. 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 self-insured contends that the hearing officer's injury, extent-of-injury, and disability determinations are against the great weight of the evidence. In so arguing, the self-insured emphasizes the same factors on appeal as it emphasized at the hearing. The significance, if any, of those factors was a matter left to the hearing officer in determining whether the claimant had sustained his burden of proof on each issue. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant, and he was acting within his province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determinations are so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the injury, extent-of-injury, and disability determinations on appeal. Cain; Pool.

We find no merit in the self-insured's contention that the hearing officer erred in determining that the self-insured's "contest of compensability sometime after February 2, 2001, was not based on newly discovered evidence." It is undisputed that the self-insured received its first written notice of the claimed injury on _____. The self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability is dated February 2, 2001, and was filed at some point thereafter. The self-insured argues that the information it received from the claimant at the April 2001 benefit review conference that he had sustained a prior back injury was newly discovered evidence, which permitted it to reopen the issue of compensability. In so arguing, the self-insured emphasizes that the claimant did not tell the adjuster in an interview following the injury about his having sustained a prior back injury which necessitated a percutaneous discectomy. However, as the hearing officer noted, the self-insured did not explain "[h]ow the April 2001 admission resulted in the [self-insured] disputing the claim in February of 2001. . . ." The self-insured essentially argues that because it had already filed the untimely contest of compensability in February 2001, it was not required to file another contest in April 2001 after it obtained the alleged newly discovered evidence. Essentially, the self-insured argues that it is permitted to file a late contest and then in the event that something constituting newly discovered evidence emerges, the untimely contest of compensability functions as its contest based upon that newly discovered evidence. The self-insured cites no authority for that proposition, and we are unaware of any support for such an assertion. Our review of the record does not reveal that the hearing officer erred in determining that the self-insured's contest of compensability in this case was not based upon newly discovered evidence. Thus, the self-insured was not permitted to reopen the issue of compensability under Section 409.021(d).

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

C.T. CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge