

APPEAL NO. 012102
FILED OCTOBER 23, 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. The record closed on August 10, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) sustained a new compensable low back injury on _____, and had resulting disability from _____, through January 10, 2001. The claimant appeals the disability finding, arguing that there is no evidence to support the finding that disability ended on January 10, 2001. The respondent (carrier) replies, urging that there was sufficient evidence to support the hearing officer's finding of the cessation of disability. The finding that the claimant sustained a compensable injury to his low back area on _____, not having been appealed, has become final. See Section 410.169

DECISION

Affirmed.

The claimant was employed as a delivery driver for the employer. He testified that he sustained prior back injuries while working for the same employer on _____, and _____. The claimant further testified that on _____, while he was in his package car, he bent to pick up some packages and felt pain in his back. He went to see his treating physician, Dr. B, that same day. Dr. B's records reflect that he concluded that the claimant's symptoms for the _____, injury were different from the symptoms of the previous injuries.

"Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The burden of proof is on the claimant to show that his disability was the result of his compensable injury. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993; Garcia v. Aetna Casualty and Surety Company, 542 S.W.2d 477 (Tex. Civ. App.-Tyler 1976, no writ).

The hearing officer found minimally sufficient evidence to support a back injury on _____, and further found that disability ended on the date of the examination by the carrier's doctor, Dr. C. The records reflect that the examination found the claimant's gait was normal and movements were full and without any apparent discomfort. No spasms or trigger points were noted. Dr. C concluded that the claimant could return to work full duty without restrictions and that the claimant needed no further treatment, albeit warning that the claimant is at high risk for further injury and should govern his activities accordingly.

At the CCH the claimant testified that he continues to be off work under a doctor's orders. The narrative from the claimant's treating physician dated October 12, 2000, states that "with a proper passive and active treatment program, the [claimant] should heal

without much complication.”

Clearly, there was considerable inconsistency and conflict in the evidence before the hearing officer on the appealed issue of disability and this was a matter for his resolution. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). We have reviewed the evidence and cannot conclude that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). This is so even though inferences different from those found most reasonable by the hearing officer find some support in the evidence. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Accordingly, the decision and order of the hearing officer are affirmed.

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

**C T CORP.
350 ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge