APPEAL NO. 012127
FILED OCTOBER 22, 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 August 15, 2001. With respect to the sole issue before her, the hearing officer determined that the respondent (claimant) had disability beginning on May 20, 2001[1], and continuing through the date of the CCH. In its appeal, the appellant (carrier) argues that the claimant was unemployed because he was terminated, or resigned, "for cause," and that he failed to obtain new employment for reasons other than the compensable injury of _____. Therefore, the carrier seeks reversal of the hearing officer's decision and order. The claimant makes several arguments regarding the carrier's appeal, including that it was not in compliance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(4) (Rule 143.3(a)(4)) (mailing requirements) and that the carrier improperly failed to provide a copy of the court reporter's transcript to the claimant. The claimant otherwise urges that the hearing officer's decision be affirmed.

DECISION

Affirmed.

We first address the two form arguments made by the claimant in his response to the carrier's appeal. The claimant alleges that because the carrier did not provide him a copy of its appeal on the same day it sent one to the Texas Workers' Compensation Commission (Commission), then the appeal should be considered "untimely" and be disallowed, pursuant to Rule 143.3(a)(4). This argument fails because it appears that the carrier complied with the rules. The carrier hand-delivered the appeal to the Commission September 7, and posted a copy to the claimant on the same day. Similarly, the claimant's second argument is untenable. The carrier is not required to provide a court reporter's transcript to the claimant. The claimant must order and purchase a copy of the transcript from the court reporter.

The record supports the hearing officer's determination that the claimant had disability from May 20 until the date of the CCH. The parties stipulated that the claimant sustained a compensable injury to his coccyx and left foot on _____. The claimant's undisputed testimony was that he returned to work on Tuesday, April 3, having received treatment in an emergency room on Monday, April 2. It is also undisputed that the claimant worked in his usual, managerial position from April 3 until he was asked to resign or be terminated on May 4. The claimant chose resignation and received salary through May 19. The claimant's treating doctor, Dr. J, took the claimant completely off

[1]All dates are 2001, unless otherwise indicated.

work May 29. Dr. J has yet to release the claimant to work, and the claimant is unemployed.

The disputes in this case center around the circumstances of the claimant's separation from his employment. The claimant alleges that, after his injury, he was only working self-imposed light duty and that he had talked Dr. J into releasing him to work with restrictions, instead of taking him off work; so, when the claimant was separated from the employment where he had some control over his duties, the doctor again took him completely off work. The carrier maintains that Dr. J's taking the claimant completely off work was a result of the claimant's need to be paid temporary income benefits, and that the claimant applied for unemployment insurance after leaving his employment, alleging he could work without restrictions. The claimant said he did receive unemployment for one week, but no more, because Dr. J took him off work.

The hearing officer determined that the claimant was unable to obtain and retain employment, beginning May 20, at his preinjury wage due to his compensable injury of _____. Therefore, the hearing officer concluded that the claimant had disability for the period of May 20 through August 15. *See* Section 401.011(16).

Whether the claimant's inability to obtain and retain employment at his preinjury wage is a result of his compensable injury is a question of fact. The parties presented conflicting evidence on the issue. The hearing officer, as finder of fact, is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not find it so here.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION 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:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge