

APPEAL NO. 012174
FILED OCTOBER 18, 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 September 4, 2001. The hearing officer resolved the disputed issues by concluding that the compensable injury sustained by the appellant/cross-respondent (claimant) on _____, extended to an injury to the lumbar spine and that the claimant had disability beginning February 22, 2001, and continuing through the date of the hearing. In his appeal, the claimant argues that the medical evidence and his testimony proved by a preponderance of the evidence that he had disability beginning September 1, 2000. The respondent/cross-appellant (carrier), in its response, argues that there was sufficient evidence to support the finding of the hearing officer that the claimant did not have disability from September 1, 2000, through February 21, 2001. In its cross-appeal, the carrier contends that the hearing officer's extent-of-injury determination is against the great weight of the evidence. Further, the carrier contends that the only period of disability is the two-week period following the claimant's hernia repair. In his response, the claimant argues that these determinations are supported by sufficient evidence.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____, the parties having stipulated that the claimant sustained a compensable right inguinal hernia. The claimant testified that on that date he was pulling a dock plate, which is very heavy, and felt a sharp pain all the way down his right leg. He testified that he reported the incident to his supervisor, but continued to work, and that his employment was terminated on September 13, 2000, for failure to show up for work. The claimant testified that he did not show up for work because he was arrested and that he remained in jail until the end of September. He said he worked for a temporary service agency from November 16, 2000, until February 18, 2001, when he could no longer stand the pain.

The evidence reflected that an initial diagnosis of a right inguinal hernia was made. The claimant testified that after seeing Dr. G, his treating doctor, he was seen by Dr. T, who told him on January 18, 2001, that he was suffering from more than a hernia. A work status report reflects that Dr. G took the claimant off work on February 22, 2001. The claimant testified that he is still continuing therapy with Dr. G and has not been able to return to work.

The claimant had the burden to prove by a preponderance of the evidence that his compensable injury of _____, extended to his lumbar spine as well as the period of disability, if any. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v.

Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In our view, the challenged factual findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**C.T. CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge