

APPEAL NO. 012189
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 August 29, 2001. He determined that the respondent (claimant) sustained an injury in the form of an occupational disease; that the date of injury is _____; and that the claimant had disability beginning on _____, and continuing through the date of the hearing. The appellant (self-insured) urges on appeal that there is insufficient evidence to support the disability finding. The claimant urges affirmance.

DECISION

We affirm.

"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 self-insured argues that the hearing officer erred in finding that the claimant had disability because "the credible evidence on the issue of disability is that the Claimant is not working due to her termination and not due to her alleged compensable injury." The Appeals Panel, in an earlier decision, stated that the 1989 Act "is not intended to be a shield for an employee to continue receiving temporary income benefits where, taking into account all the effects of his injury, he is capable of employment but chooses not to avail himself of reasonable opportunities or, where necessary, a bona fide offer." That decision further stated that the 1989 Act "does not impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably available and fully compatible with his training, experience and qualifications." Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. An injured employee can have disability subsequent to termination of the employment for cause. Texas Workers' Compensation Commission Appeal No. 94238, decided April 11, 1994.

The claimant had the burden to prove that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb a challenged factual determination of a hearing officer unless it is 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that the evidence, including the treating doctor's recommendation

for the claimant to be off work and the carrier's required medical examination doctor's recommendation for light-duty status, sufficiently support the hearing officer's disability finding.

We affirm the decision and order of the hearing officer.

The true corporate name of the self-insured is **AMERICAN TELEPHONE AND TELEGRAPH** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77002.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge