APPEAL NO. 012363
FILED NOVEMBER 21, 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 September 11, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of a hernia on _____, and had resultant disability from February 17, 2001, until the date of the CCH. In addition, the hearing officer determined that the appellant (carrier) was liable for the payment of benefits up to March 23, 2001, resulting from its failure to dispute or initiate payment of benefits until that date, beyond the seven days of the date it received written notice of the injury, no later than February 19, 2001, in direct contravention of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3). As neither party appealed the Rule 124.3 issue, that determination has become final pursuant to Section 410.169 of the 1989 Act.

The carrier appeals the compensability and disability determinations of the hearing officer on sufficiency grounds and seeks reversal. There is no response in the file from the claimant.

DECISION

Affirmed in part; reversed and rendered in part.

There was sufficient evidence in the record to support the hearing officer's determination that the claimant sustained a compensable injury on _____. The claimant testified that on _____, while working as a cashier for the employer, she lifted a heavy box in order to scan it and felt an immediate, sharp pain in her stomach. The claimant testified that while she had had a dull soreness in her stomach for about five months prior to _____, the symptoms she had on that date were different. The claimant went to the emergency room and was diagnosed with a hernia on _____. The claimant testified that the doctor told her that her hernia was a result of lifting heavy objects and not because of her delivery of a child on September 22, 2000. The claimant introduced medical records that the hearing officer found to support her allegations. How much weight is given to the medical evidence is a factual determination within the province of the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The carrier argued that the claimant sustained a post-partum hernia, a preexisting condition, and that her injury was not work related. The carrier pointed to one medical record listing the hernia as "post-partum," and noted that in her injury statement given to the employer the claimant had not connected her pain to lifting a heavy object at work. The carrier also argued that the first medical report connecting the claimant's injury to her work was in July 2001. We affirm the hearing officer's decision on the injury issue as being supported by the evidence.

The claimant performed light-duty work at the employer from February 17, 2001,[1] to February 28, 2001, when she was terminated for cause. The hearing officer incorrectly found that that time period was one of "prima facie evidence of disability." The hearing officer commented:

> It should be noted that the claimant asserted disability only from February 28 [2001] forward, as she was working at her usual wages up to that point. However, the evidence is clear that between February 17 and February 28 [2001], the claimant was on "restricted duty", which Appeals Panel jurisprudence has consistently held to be itself prima facie evidence of disability as defined by the [1989] Act.

The hearing officer does not identify to what "Appeals Panel jurisprudence" he is referring; however, the hearing officer's statement is incorrect as a matter of law. "Disability" is defined in Section 401.011(16) as the "inability because of a compensable injury to obtain and retain employment" at the preinjury wage. If the claimant was "working at her usual wages," it is immaterial whether it was restricted duty, the point being that the claimant was employed earning her preinjury wage. The hearing officer's decision is reversed on this point and we render a new decision that the claimant had disability from February 28 through the date of the CCH.

Whether the claimant sustained a compensable injury and whether she had any resultant disability were questions of fact for the hearing officer to decide. There was conflicting evidence submitted on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Campos, *supra.* The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

[1]The employer's bona fide offer of "light duty" employment is dated, however, February 20, 2001.

For the stated reasons, the hearing officer's decision and order are affirmed in part and reversed and rendered in part.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE** and the name and address of its registered agent for service of process is

ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge