APPEAL NO. 012430
FILE NOVEMBER 29, 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 12, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that she had disability, as a result of her compensable injury, from May 18 to July 5, 2001; and that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy. In its appeal, the appellant (carrier) contends that each of those determinations is against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that she had disability from May 18 to July 5, 2001. Those issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the injury and disability issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In challenging the hearing officer's determinations, the carrier emphasizes the same factors it emphasized at the hearing. The significance of those factors was a matter left to the hearing officer as the fact finder. Nothing in our review of the record reveals that the injury and disability determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer also determined that the carrier did not sustain its burden of proving all of the requirements for an election of remedies to constitute a bar to recovery under Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980). Our review of the record does not reveal that the hearing officer erred in so finding. *See* Texas Workers' Compensation Commission Appeal No. 011504, decided August 6, 2001. Accordingly, we affirm the hearing officer's determination that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GEORGE MICHAEL JONES
9300 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCURRING OPINION:

I concur in the result. I write separately to disassociate myself from the decision cited by the majority, Texas Workers' Compensation Commission Appeal No. 011504, decided August 6, 2001. In my view, that decision, and other similar decisions, have seized upon the "manifest injustice" language in Bocanegra v. Aetna Life Ins. Co., 605 S.W.2d 848 (Tex. 1980), to distort the test for election of remedies. See my concurring opinion in Texas Workers' Compensation Commission Appeal No. 001321, decided July 26, 2000.

Philip F. O'Neill
Appeals Judge