

APPEAL NO. 012431
FILED DECEMBER 3, 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 11, 2001. The hearing officer resolved the disputed issues by concluding that respondent/cross-appellant (claimant) had disability beginning on November 2, 1998, and continuing through November 9, 1998, and beginning on December 2, 1998, and continuing through March 24, 1999; and that claimant was not barred from pursuing workers' compensation benefits due to an election of remedies. In its appeal, appellant/cross-respondent (carrier) argues that claimant did not prove disability and that he made a knowing election of remedies. In his response, claimant urges affirmance. In his cross-appeal, claimant contends that the evidence showed he had disability from August 8, 1998, through the date of the hearing. In its response, carrier asserts that the decision is supported by the evidence in the record and should therefore be affirmed.

DECISION

We affirm.

Claimant contends that the hearing officer erred in limiting disability, asserting he had disability from August 8, 1998, to the date of the hearing. Carrier contends that the hearing officer erred in determining that claimant had disability for more than a few weeks. Carrier argues that claimant had only a strain and that the disability determination is against the great weight and preponderance of the evidence. We have reviewed the complained-of disability determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. There were off-work slips and reports from claimant's doctors which supported the periods of disability found by the hearing officer. The hearing officer stated that, although there was evidence to support additional periods of disability, the most credible evidence supported a disability finding for the periods found by the hearing officer. We conclude that the hearing officer's disability determination 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).

Carrier contends the hearing officer erred in determining that claimant did not make a knowing election of remedies. The hearing officer accepted claimant's testimony that he did not make an informed election of remedies to use his group health insurance to the exclusion of workers' compensation benefits. This was a fact issue for the hearing officer to decide based on the evidence before him. Texas Workers' Compensation Commission Appeal No. 992959, decided February 14, 2000. We conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge