

APPEAL NO. 012474
FILED NOVEMBER 20, 2001

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 011728, decided September 7, 2001, where we remanded the case to obtain a street address for the respondent/cross-appellant's (carrier) registered agent for service of process. That information was placed in the record and forwarded to the appellant/cross-respondent (claimant). No hearing on remand was held, and the hearing officer's decision and order was reissued without modification. The hearing officer determined that the claimant had disability as a result of his compensable injury from August 5, 2000, to January 26, 2001. In his appeal, the claimant contends that the hearing officer erred in ending disability on January 26, 2001. In its cross-appeal, the carrier asserts error in the hearing officer's determination that the claimant had disability from August 5, 2000, to January 26, 2001. In response to the other party's appeal, the claimant and the carrier urged affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability from August 5, 2000, to January 26, 2001, but that the claimant did not have disability from January 27, 2001, through the date of the hearing. The disability issue presented a question 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 issue of whether the claimant had disability. 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). Sufficient evidence supports the hearing officer's determination that the claimant had disability from August 5, 2000, to January 26, 2001, specifically the claimant's testimony and the medical records from his treating doctor. The carrier contends that the claimant worked at his regular wages for the period from August 5 to September 24, 2000, and the carrier introduced a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) indicating that it began paying temporary income benefits on September 25, 2000. However, there is no evidence in the record that the claimant worked at wages equivalent to his preinjury wage during the period from August 5 to September 24, 2000. As such, no basis exists for us to disturb the determination that the claimant had disability for that period. The hearing officer was also free to interpret the claimant's activities on the January 26, 2001, surveillance videotape and to determine that the claimant did not sustain his burden of proving that he had disability from that date to the date of the hearing. Nothing in our review of the record reveals that the hearing officer's determination that the claimant had disability from August 5, 2000, to January 26, 2001, and did not have disability from January 27, 2001, through the date of the hearing is 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's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge