

APPEAL NO. 012477  
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 (CCH) was held on September 13, 2001. The appellant (carrier) appeals the hearing officer's determination that the respondent (claimant) has disability beginning on May 15, 2001, and continuing through the date of the CCH, contending that the determination was in error and is against the great weight and preponderance of the evidence. The carrier also asserts that the hearing officer was not impartial and that his questions went beyond cross-examination into advocacy. The claimant responds, urging affirmance. The determination that the claimant's treating doctor was Dr. P has not been appealed and has become final.

**DECISION**

Affirmed.

**DISABILITY**

The hearing officer's determination was not against the great weight and preponderance of the evidence. Disability is a factual issue for the hearing officer to decide. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The claimant testified and submitted medical evidence to support his case. When he was taken off work, he was at that time working under restrictions in a light-duty position. Dr. P took the claimant completely off work on May 15, 2001, through the date of the CCH. Although the carrier argues that the claimant was off work due to a termination of his employment, this is not determinative where, as here, there is evidence that the injury was a producing cause of the inability to work and that the claimant was under restrictions when subsequently taken off work by his treating doctor. The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

**ALLEGATION OF HEARING OFFICER BIAS**

Citing some of the hearing officer's questions and comments, the carrier also argues on appeal that the hearing officer was biased and that this bias led to the decision against the carrier. As the claimant notes in his response to the appeal, no objection was made at the time by the carrier to questioning by the hearing officer.

We do not find the cited examples, which are portions in the context of longer periods of questioning by the hearing officer, outside the bounds of impartiality or clarification nor reflective of bias against the carrier. Moreover, to the extent that the termination was, as the carrier asserts, critical to the disability issue, we note that many of the hearing officer's questions were directed at finding out the reasons and timing of the termination as well as the employer's receipt of an off work-slip from the claimant's doctor. The carrier presented two witnesses. The human resources specialist offered by the

carrier decoded various notations in the claimant's attendance log and stated the reason for the termination from those codes. It was not unreasonable for the hearing officer to infer that the employer's human resources officer would be more than a repository of personnel records and, therefore, his further inquiry into the knowledge of the termination does not, in our opinion, qualify as advocacy. Reviewing his questions of the other witness in the context of the entire testimony, we likewise cannot agree that bias was demonstrated.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANNIA** 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.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge