

APPEAL NO. 012524
FILED 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 (CCH) was held on September 25, 2001. The hearing officer determined that the respondent (claimant) had disability beginning on February 22, 2001, and continuing through the date of the CCH, September 25, 2001; and that the claimant is entitled to change treating doctors pursuant to Section 408.022.

The appellant (carrier) appealed, arguing that the hearing officer's decision is against the great weight and preponderance of the evidence. The claimant filed a response urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on February 22, 2001, the employer notified him that they no longer had light-duty work for him and that he should go home. He has not worked since that date. The claimant testified that he requested a change of treating doctors because he was unable to secure appointments at reasonable times, that the treating doctor's office was too far from his home, and that his condition was worsening. On February 28, 2001, he changed treating doctors from a neurosurgeon to a chiropractor and believed that he attained relief for his back pain from the chiropractic manipulations.

The evidence sufficiently supports the hearing officer's determination that the claimant had disability beginning on February 22, 2001, and continuing through the date of the CCH, September 25, 2001. Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer found that "[d]ue to the claimed injury Claimant was unable to obtain or retain employment at wages equivalent to claimant's pre-injury wage beginning on February 22, 2001, and continuing through the date of [the CCH], September 25, 2001."

The evidence sufficiently supports the hearing officer's determination that the claimant is entitled to change treating doctors pursuant to Section 408.022. The hearing officer determined that "[d]ue to [the treating doctor's] patient load and his inability to provide the Claimant reasonable medical care on a regular basis, [the treating doctor became] unavailable or unable to provide the proper medical care needed by the Claimant."

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence

(Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer 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 N. PAUL ST.
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge