

APPEAL NO. 012710
FILED NOVEMBER 27, 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 October 10, 2001. With regard to the only issue before her, the hearing officer determined that the appellant (claimant) did not have disability due to the compensable injury of _____ (all dates are 2001 unless otherwise noted).

The claimant's appeal refers to an extent-of-injury issue and requests that we reverse the hearing officer's decision and render a new decision that the "claimant did sustain a compensable injury" and had disability from July 6 "to the present." The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant, an air conditioner technician, sustained a compensable injury on _____, when he slipped and fell on his buttocks. The claimant initially treated with Dr. S, who diagnosed "Sprain/strain, sacrococcygeal" and returned the claimant to full duty without restrictions. The claimant testified that he returned to work and worked his regular duties until May 15, when Dr. S gave the claimant a 20-pound lifting, and no stooping or bending from the waist, restriction. The employer accommodated the claimant's restrictions and the claimant continued to work. On July 2, Dr. S again released the claimant to full duty. The claimant continued to work to July 5, when he was terminated for excessive unexcused absenteeism. The parties stipulated that the claimant did not have disability from March 30 through July 5. The claimant began treating with Dr. D, a chiropractor, on July 6. Dr. D diagnosed a number of conditions, took the claimant off work, and began chiropractic treatment. At the time of the CCH, the claimant was in a work hardening program. An MRI performed on May 30 showed some annular tears and bulging at L2-3, L3-4, and L4-5. A surveillance videotape taken on August 17 and 18 showed the claimant doing chores around the house and shopping. The period of disability at issue was from July 6 through the date of the CCH.

There was conflicting evidence regarding disability with Dr. S releasing the claimant to full duty on July 2 and the video supporting the hearing officer's determination that the claimant did not have disability on or after July 6. Contrary to the claimant's appeal, there was a stipulation of a compensable injury and extent of injury was not an issue.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), 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.). 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 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 **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge