

APPEAL NO. 013103
FILED FEBRUARY 1, 2002

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 November 26, 2001. The appellant (carrier) appeals the hearing officer's determinations that the respondent (claimant) sustained a compensable injury on _____, and that the claimant has disability as a result of the compensable injury from October 19, 2000, through the date of the hearing. There is no response from the claimant in the file.

DECISION

Affirmed.

COMPENSABLE INJURY

The claimant testified that he sustained a back injury when he lifted a box that weighed about 30 pounds while in the course and scope of his employment. Whether the claimant sustained the alleged injuries as a result of the work-related incident on _____, was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's 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 (Tex. 1986).

DISABILITY

With respect to the carrier's assertion that the hearing officer erred in finding disability because the claimant failed to make himself available for light-duty employment, we note that there was no issue concerning a bona fide offer of employment.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to a claimant's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The fact that a claimant is released for light duty is evidence that the effects of the injury continue and disability therefore exists; even a claimant terminated for cause may establish disability thereafter. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. It is well settled that the claimant's testimony alone can prove disability (Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992), and that objective medical evidence of disability is not required (Texas Workers'

Compensation Commission Appeal No. 91083, decided January 6, 1992). The Appeals Panel has also held that a release only to light duty is evidence that disability continues and that an injured employee released only for light duty has no obligation to look for other employment. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. All of the medical reports submitted into evidence indicate that the claimant was released to light-duty work with restrictions from the date of the injury. There is no evidence that the claimant had been released to return to work without restrictions as of the date of the CCH. Even the carrier-selected required medical examination doctor, who examined the claimant on May 8, 2001, determined that the claimant could return to light-duty work with the restriction that he not lift more than 25 pounds and not engage in repetitive bending with his back. There is sufficient evidence to support the hearing officer's determination that the claimant has disability as a result of his compensable injury.

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. ST. PAUL
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Terri Kay Oliver
Appeals Judge