

APPEAL NO. 020084
FILED FEBRUARY 11, 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 December 10, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable right hand injury on _____, while working for (employer 1); that as a result of the _____, injury, the claimant had disability from August 25, 2000, through March 5, 2001; that the claimant did not sustain a compensable injury on _____, while working for (employer 2); and because there is no _____, compensable injury, there is no disability therefrom. The claimant appeals the hearing officer's determination that disability ended on March 5, 2001. We have the unusual situation where both employer 1 and employer 2 were represented by the same insurance carrier. Each employer was, however, represented by a separate attorney. For purposes of this case, we will use the designation carrier 1 to identify the carrier for claim number 1, and we will use carrier 2 to identify the carrier for claim number 2. The respondent in this appeal is carrier 1, which has replied to the appeal and is urging affirmance. Carrier 2 did not submit a response to the appeal. The determinations that the claimant had a compensable injury on _____, to her right hand; that on _____, the claimant did not sustain a compensable injury; and that because there is no _____, compensable injury, there can be no disability, have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

Disability is defined in the 1989 Act as "the inability because of a compensable injury to obtain or retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant has the burden of proving that she has disability. Texas Workers' Compensation Commission Appeal No. 941566, decided January 4, 1995. The compensable injury need not be the sole cause of the disability. Texas Workers' Compensation Commission Appeal No. 960054, decided February 21, 1996; Texas Workers' Compensation Commission Appeal No. 941012, decided September 14, 1994. The hearing officer determined that the claimant was only able to credibly establish disability from August 25, 2000, through March 5, 2001. This determination is apparently based on her comment in the Statement of the Evidence that "It appears from medical records that Claimant's last medical treatment with her treating doctor, [Dr. R] was on March 5, 2001." The evidence of record supports the hearing officer's determination. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance

Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The claimant has attached a document to her appeal which might support a finding that she was receiving medical treatment beyond the date of March 5, 2001, but that document was not presented at the CCH, although it was in existence at that time. We do not consider evidence presented for the first time on appeal, unless there are circumstances which do not exist in this case.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier for both employers is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MR. MARVIN KELLEY
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9120 BURNET RD.
AUSTIN, TEXAS 78758.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge