

APPEAL NO. 020480  
FILED APRIL 15, 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 was held on February 13, 2002. The hearing officer resolved the disputed issues before him by determining that the respondent/cross-appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and that he did not have disability for any period after the date of the injury. The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant responded, urging affirmance of that determination. The claimant appealed the hearing officer's determination that he did not have disability for any period after \_\_\_\_\_. The file contains no response from the carrier to the claimant's appeal.

DECISION

Affirmed in part, reversed and rendered in part.

The claimant testified that part of his job duties for the employer was to push heavy stacks of meat suspended from overhead tracks. The claimant testified that on \_\_\_\_\_, while pushing a heavy stack of meat he felt a warm sensation in his left shoulder; that he did not immediately report the injury because he thought the pain would "work itself out"; that the pain came on gradually; that he was eventually sent to a clinic by his employer on October 2, 2001; that he was released to return to work with a restriction of "no reaching above shoulders"; that he decided to see Dr. W, who was recommended by the claimant's attorney because his shoulder was not getting better; that he worked light duty until Dr. W took him off work on October 16, 2001; and that he would not have been able to continue working after October 16, 2001, because his condition was worsening. The medical records from the clinic indicate that the claimant was diagnosed as having a left rotator cuff sprain and that he was immediately released to work with a restriction against reaching above the shoulders. The claimant was maintained on restricted work status until Dr. W took him off work on October 16, 2001. Dr. W's office notes from his initial examination of the claimant indicated that he suspected a muscle/ligament tear in the left shoulder. Dr. W ordered an MRI to rule out pathology and took the claimant off work. On November 26, 2001, the claimant underwent an MRI of his left shoulder, which revealed multiple abnormalities, including a possible rotator cuff tear and impingement syndrome. A December 11, 2001, report from Dr. Mc, the orthopedic surgeon to whom the claimant was referred by Dr. W, reveals that the claimant is scheduled for left shoulder arthroscopic surgery "with probable rotator cuff repair and/or acromioplasty and/or any other procedure deemed necessary at the time of the surgery."

The hearing officer did not err in determining that the claimant sustained a compensable injury on \_\_\_\_\_. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286

(Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the issue of whether the claimant sustained a compensable injury. It was for the hearing officer, as trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Sufficient evidence supports the hearing officer's determination that the claimant sustained a compensable injury at work on \_\_\_\_\_. Nothing in our review of the record reveals that the injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer erred in determining that the claimant did not have disability resulting from the compensable injury for any period after \_\_\_\_\_. In his Statement of the Evidence, the hearing officer gave the reason for his determination that the claimant did not have disability. Specifically, the hearing officer concluded that because the claimant was able to continue to do his job for almost a month after sustaining the compensable injury, and that because the employer gave him light-duty work for two weeks within the restrictions placed upon him by the clinic, the claimant did not have disability. It is important to note at this point that the hearing officer did not have a bona fide offer of employment issue before him.

We have often held that a restricted release to work, as opposed to an unrestricted release to work, is evidence that the effects of the injury remain. Texas Workers' Compensation Commission Appeal No. 92432, decided October 5, 1992. Disability is fluid in nature, and a claimant can move in and out of disability over time. The hearing officer found the claimant to be a credible witness. The claimant testified that while he did continue to work, his condition was not improving and that, as a result, he sought a different treating doctor. Because the working diagnosis from the clinic, a rotator cuff sprain, was flawed, it follows that the light-duty restrictions are also suspect. The medical evidence from Dr. W, who immediately took the claimant off work due to his diagnosis of a probable muscle or ligament tear (which was confirmed by an MRI) and referred the claimant to an orthopedic surgeon, who has recommended surgery, constitutes the great weight of the evidence against the hearing officer's determination that the claimant did not have disability as a result of his compensable injury. Cain, supra. Accordingly, we reverse the disability determination and render a new decision that the claimant had disability from October 16, 2001, through the date of the hearing.

The hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_, is affirmed. The hearing officer's determination that the claimant did not have disability is reversed, and a new decision rendered that the claimant had disability from October 16, 2001, through the date of the hearing, as a result of his \_\_\_\_\_, compensable injury.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Susan M. Kelley  
Appeals Judge