

APPEAL NO. 020612  
FILED APRIL 29, 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 February 15, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not have disability resulting from the injury of \_\_\_\_\_, after July 3, 2001, through the date of the CCH. The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The disputed issue was whether the claimant had disability from July 4, 2001, through the present. 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 claimant has the burden to prove that she has disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The fact that a claimant may not be at maximum medical improvement (MMI) as defined by Section 401.011(30) does not mean that the claimant has proven that she has disability because MMI and disability are defined differently. We do not agree that the hearing officer, in making his findings of fact, considered a carrier exhibit that was excluded from evidence because the hearing officer: (1) noted in the Evidence Presented portion of his decision that that exhibit was not admitted; (2) did not reference the excluded exhibit in his Statement of the Evidence, except as to note the claimant's testimony with regard to the action taken by another state agency; and (3) there is other evidence, including the claimant's testimony, on which the complained-of findings may be based. We conclude that the hearing officer's decision that the claimant did not have disability after July 3, 2001, through the date of the CCH is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge