

APPEAL NO. 021255
FILED JUNE 24, 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 April 23, 2002. The hearing officer resolved the issues before him by determining that the respondent/cross-appellant (claimant) did not sustain a compensable repetitive trauma injury on _____, but did sustain a specific, compensable injury to his low back on that date. Further, the hearing officer determined that, as a result of his compensable injury, the claimant had disability from _____, through February 17, 2002. The appellant/cross-respondent (self-insured) appealed the determinations of injury and disability on sufficiency grounds, and also complained that the hearing officer had abused his discretion in adding an issue that was not certified at the benefit review conference, whether the claimant sustained a [specific] compensable injury on _____, on the basis that it was actually litigated by the parties. The claimant appealed the hearing officer's determination that he did not sustain a repetitive trauma injury in the form of "Sam Browne syndrome," i.e., a low back injury resulting from years of wearing his utility belt (including gun holster) around his waist. The claimant also responded to the self-insured's appeal and urged affirmance of the injury and disability determinations, as well as arguing that the hearing officer acted within his discretion in adding the "specific injury" issue. The self-insured did not respond to the claimant's appeal.

DECISION

We affirm.

The hearing officer did not err in determining that the claimant sustained a compensable injury to his low back on _____. The claimant testified to facts that would support a finding of either a repetitive trauma injury or a specific injury, both with a date of injury of _____. The claimant testified that he experienced a "sharp twinge" of pain while walking up the stairs at his office building at the beginning of his shift on that date. In addition, the claimant collapsed to his knees while at lunch that day, and was taken to a hospital for treatment. The claimant later saw additional doctors, and the resulting medical records, including an MRI showing herniations, support the claimant's argument that he suffered a compensable injury to his low back. The self-insured argued that the claimant suffered neither a repetitive trauma injury nor a specific injury on _____, and that the claimant had failed to meet the burden to show the causation between his work duties and his objective medical findings of injury.

The hearing officer is the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer believed that the claimant did not sustain a repetitive trauma injury, but did sustain a specific injury to his low back on _____. While the self-insured presented other evidence on the issue,

upon our review of the record, we conclude that the hearing officer's determination that the claimant sustained a compensable injury on _____, is supported by the evidence, and that it 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, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

As we affirm the hearing officer's determination regarding compensable injury, we likewise affirm his decision that the claimant had disability from _____, through February 17, 2002, as he found that, as a result of his compensable injury, the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage during that time period. See Section 401.011(16).

The self-insured also argued that the hearing officer abused his discretion in adding the issue of whether the claimant sustained a specific injury on _____. However, the hearing officer stated that he added the issue as the parties actually litigated the issue of specific injury. The hearing officer acted in accordance with guiding principles in adding the specific injury issue, and did not abuse his discretion. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by the self-insured, the official name of the self-insured governmental entity is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Roy L. Warren
Appeals Judge