

APPEAL NO. 021342
FILED JULY 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 (CCH) was held on April 25, 2002. The hearing officer determined that (1) the respondent (claimant) had sustained a compensable injury on _____; (2) the claimant had disability from _____, continuing through the date of the CCH; and (3) the appellant (carrier) was liable for payment under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3).

The carrier appealed, contending that the hearing officer's determinations on the injury were in error and not supported by the evidence; that without a compensable injury, the claimant did not have disability; and that the carrier is not liable for benefits under Rule 124.3. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, an airline flight attendant, testified that she sustained a compensable neck and right shoulder injury pulling a beverage cart out of its storage area on _____. The claimant first saw her family doctor on October 9, 2001, for shoulder pain, but the medical record of that date did not mention a work-related injury. The doctor subsequently, in an amendment, agreed that the claimant had told him that her injury occurred at work. After a week off, the claimant returned to work, but the claimant testified that her injury got worse and that she was unable to work since _____.

A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) indicated that the carrier received first written notice on _____. The hearing officer found that the carrier initiated income benefits on _____, and paid income benefits from _____, through November 13, 2001.

There were some inconsistencies in the medical records, and the carrier argued that the doctor's reports lack credibility, do "not establish damage or harm," and lack "causality." Basically, the carrier attacks the weight and credibility that was given to the evidence. The hearing officer found the claimant's testimony "credible and persuasive." Section 410.165(a) makes the hearing officer the sole judge of the weight and credibility of the evidence. As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the carrier. Nothing in our review of the record

reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Under the circumstances, where we are affirming the hearing officer's determinations on injury and disability, we hold that the carrier's arguments on Rule 124.3 and Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio, 2000 pet. filed) are not applicable.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY
AIG
675 BERING, 3RD FLOOR
HOUSTON, TEXAS 77057.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Michael B. McShane
Appeals Judge