

APPEAL NO. 021912
FILED SEPTEMBER 16, 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 July 1, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from November 30 to December 15, 2001, and from May 6, 2002, through the date of the hearing, as a result of his compensable injury. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury and that he had disability, as a result thereof, from November 30 to December 15, 2001, and from May 6, 2002, through the date of the hearing. Injury and disability are questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993; Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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 of the weight and credibility that is to be given the evidence. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Indep. Sch. Dist. v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). When reviewing a hearing officer's decision for factual sufficiency, we will reverse the decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). In challenging the hearing officer's injury and disability determinations, the carrier emphasizes the same factors it emphasized at the hearing. The significance of those factors was a matter for the hearing officer, as the fact finder, to determine. 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 reverse those determinations on appeal.

In the alternative, the carrier argues that we should remand the disability issue because "there is no indication in the Statement of Evidence (or any place else in the Hearing Officer's decision) that the Hearing Officer even considered the fact that the Claimant was permanently laid off from his job before any alleged disability began even though the Hearing Officer specifically found that 'Apparently, the Claimant was laid off the following day and subsequently reported the injury.'" We find no merit in this

assertion. The fact of the claimant's layoff was not determinative of the issue of disability. At most it was a factor for the hearing officer to consider in deciding whether the claimant had disability. As the carrier notes, the hearing officer specifically referenced the fact that the claimant was laid off and, as such, she clearly considered the layoff and nonetheless, determined that the claimant's compensable injury, which included the left rotator cuff tear, would have caused him to be unable to obtain and retain employment at his preinjury wage even in the absence of the layoff. Accordingly, we cannot agree that any basis for a remand exists in this case.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge