

APPEAL NO. 021968
FILED SEPTEMBER 17, 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 10, 2002. The hearing officer determined that the respondent (claimant) had disability as a result of her _____, compensable injury, from November 14, 2001, through the date of the hearing. In its appeal, the appellant (self-insured) asserts error in the hearing officer's determination that the claimant had disability for the period from November 14, 2001, to January 3, 2002, and further argues that the hearing officer erred in finding disability in the period from January 4, 2002, through the date of the hearing, noting that the only issue before the hearing officer was the question of whether the claimant had disability November 14, 2001, to January 3, 2002. The appeal file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed, as modified.

The hearing officer did not err in determining that the claimant had disability from November 14, 2001, to January 3, 2002. There is no dispute that the claimant sustained a compensable injury to her right shoulder on _____. The claimant testified that she initially sought medical treatment from Dr. B, her family doctor, in October 2001. Dr. B advised her to take over-the-counter pain medication and return to work. The claimant continued to work after her injury; however, she testified that she had difficulty performing her duties as an assistant manager at a discount store, which included unloading trucks, stocking, cashiering, sweeping, mopping, and setting up merchandise displays on the sidewalk in front of the store. Shortly after her appointment with Dr. B, Mr. G, a nurse practitioner, came to the store and asked how she was doing. Mr. G, who is apparently associated with Dr. A, advised the claimant to come to Mr. G's office, which was in the back of a health food store, for treatment. The claimant testified that she never saw Dr. A; however, on November 12, 2001, Dr. A signed a Work Status Report (TWCC-73), which released the claimant to light duty with restrictions of no pushing or lifting over five pounds and no overhead reaching. The claimant stated that she went to work on November 12, 2001, but was not able to continue working secondary to a significant increase in her pain. On November 14, 2001, the claimant began treating with Dr. W and Dr. P, who are associates. Dr. W took the claimant off work on November 14, 2001, and has continued her in an off-work status through the date of the hearing. The parties agreed that when the Texas Workers' Compensation Commission (Commission) approved the claimant's request to change treating doctors to Dr. W on January 4, 2002, the self-insured began paying temporary income benefits (TIBs) to the claimant and has continued to pay TIBs through the date of the hearing.

The hearing officer did not err in determining that the claimant had disability from November 14, 2001, to January 3, 2002. That issue presented a question of fact for the hearing officer to resolve. As the fact finder, the hearing officer was free to credit the evidence from the claimant that as of November 14, 2001, she was no longer able to perform her duties as an assistant store manager because her job required her to perform duties that were beyond the light-duty restrictions listed by Dr. A. The hearing officer was also free to credit the evidence that Dr. W took the claimant off work on November 14, 2001. The self-insured appears to argue that the hearing officer was not permitted to accept the evidence from Dr. W until January 4, 2002, the date the Commission approved Dr. W as the claimant's treating doctor. We find no merit in this assertion. Dr. W's status as the treating doctor does not control the issue of whether the hearing officer finds that evidence credible and, indeed, the self-insured cites no authority in support of such an argument. The self-insured does not dispute that when Dr. W was approved as the treating doctor it initiated TIBs. There is no evidence suggesting that there was a significant change in the claimant's physical condition from November 14, 2001, and January 4, 2002. Thus, if Dr. W's evidence is convincing as of January 4, 2002, to establish disability, as the self-insured concedes by its payment of TIBs at that point, the hearing officer could also determine that it was convincing as of November 14, 2001. Nothing in our review of the record reveals that the hearing officer's determination that the claimant had disability from November 14, 2001, to January 3, 2002, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The self-insured's contention that the hearing officer improperly addressed the issue of whether the claimant had disability from January 4, 2002, through the date of the hearing is well taken. The only issue before the hearing officer was whether the claimant had disability from November 14, 2001, to January 3, 2002. Thus, the hearing officer was limited to resolving that issue. Accordingly, we strike that portion of the hearing officer's decision determining that the claimant had disability from January 4, 2002, through the date of the hearing.

The hearing officer's determination that the claimant had disability from November 14, 2001, to January 3, 2002, is affirmed. The hearing officer's determination that the claimant had disability from January 4, 2002, through the date of the hearing is stricken, as that issue was not before him.

The true corporate name of the self-insured is **(self-insured)** and the name and address of its registered agent for service of process is

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge