

APPEAL NO. 022044
FILED SEPTEMBER 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 July 12, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, and that she had disability from _____ to February 3, 2002. In her appeal, the claimant argues that the hearing officer erred in determining that she only had disability from _____ to February 3, 2002. The claimant also argues that the hearing officer erred in not adding an issue as to whether the carrier contested compensability in accordance with the requirements of Continental Cas. Co. v. Downs, Case No. 00-1309, decided June 6, 2002. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the determination that the claimant sustained a compensable injury and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

Initially, we will consider the claimant's assertion that the hearing officer erred in denying her motion to add a carrier waiver issue under Downs, *supra*. The hearing officer denied the motion to add the issue because it was not raised at the benefit review conference (BRC). The claimant acknowledges that the issue was not raised at the BRC; however, she argues that she had good cause for not raising the issue until the Supreme Courts decision in Downs was issued on June 6, 2002. We have previously considered and rejected that argument in Texas Workers Compensation Commission Appeal No. 021770, decided August 22, 2002. As such, we cannot agree that the hearing officer abused his discretion in denying the motion to add the carrier waiver issue.

The hearing officer did not err in determining that the claimant only had disability from _____ to February 3, 2002. There was conflicting evidence on the disability issue. The issue of whether the claimant had disability presented a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In this case, the hearing officer noted that the claimant returned to work for the employer for a month in a light-duty position and that he was not persuaded by the evidence from the claimant that her condition deteriorated during the period that she worked light duty or by evidence from the claimant's subsequent treating doctor taking the claimant off work on March 5, 2002. The hearing officer was acting within his province as the finder of fact in so finding. Nothing in our

review of the record demonstrates that the challenged determination is 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 that determination on appeal. 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 **ATLANTIC MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Robert W. Potts
Appeals Judge