APPEAL NO. 022088
FILED OCTOBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Following a contested case hearing held on July 23, 2002, the hearing officer found that the appellant (claimant) sustained a compensable injury on _____, consisting of a soft-tissue injury to his lumbar spine resulting from his driving the employer's truck for long periods of time in a seat with an anterior tilt. The hearing officer further found that the claimant had disability from January 2 through March 2, 2002. The claimant appeals the hearing officer's having limited his lumbar spine injury to a soft-tissue injury and asserts that his period of disability extended to the date of the hearing. The respondent (carrier) asserts that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The disputed issues stated in the benefit review conference (BRC) report and agreed to at the hearing were whether the claimant sustained a compensable injury on _____, and whether he had disability as a result of such injury and, if so, the period of the disability. The BRC report states that the claimant's position at that proceeding was that his having driven a long haul trip in a new truck with a seat which tilted forward caused him to strain his lumbar spine. He testified that he had to push back with his hands and feet to keep from sliding forward and out of the seat while driving the truck five hours per day on a nearly two-week trip. The hearing officer's findings of fact include findings that "[a]s a result of the extensive driving in the tilted seat, Claimant sustained a soft-tissue injury to his lumbar spine," and that he "did sustain an injury, in the form of a lumbar sprain/strain, in the course and scope of his employment on _____." The hearing officer's legal conclusion concerning the injury issue states that the claimant did sustain a compensable injury on _____. The claimant, who said he was age 63 and had been driving long-haul trucks for 40 years, also testified that he was taken off work by his doctor on January 2, 2002; that, at his request, his doctor released him to return to his work on March 3, 2002; that he continued to have back pain; and that he was taken off work by his doctor on May 31, 2002, and has not since returned to work due to his back pain. The hearing officer's discussion of the evidence states that the claimant was initially diagnosed with a lumbar sprain/strain; that this diagnosis appeared consistent with the mechanism of his injury; that the claimant was subsequently diagnosed with a lumbar disc extrusion; and that the medical evidence was insufficient to show a causal connection between the claimant's sitting in the faulty truck seat and the lumbar disc extrusion and insufficient to show an aggravation of his preexisting lumbar degenerative condition. However, the hearing officer did not make any findings of fact on these observations. In his closing argument, the claimant stated that "the mechanism of injury

is consistent with a low back strain/sprain and could, conceivably, cause even more serious damage to his lower back. But, we're not here on that issue. We're here on whether he had an injury within the course and scope of his employment."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We do not regard the hearing officer's findings as having exceeded the scope of the disputed injury issue nor do we find error in the hearing officer's having discussed what she felt the claimant's evidence proved and did not prove. We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and that they sufficiently support the challenged legal conclusions. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS**
**350 NORTH SAINT PAUL, SUITE 2900**
**DALLAS, TEXAS 75201**.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Veronica Lopez
Appeals Judge

_____
Michael B. McShane
Appeals Judge