

APPEAL NO. 022629
FILED NOVEMBER 26, 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 September 17, 2002. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, extends to and includes mechanical low back pain and disc disruption syndrome at L4-5 and L5-S1; that the claimant had disability from March 14, 2002, through the date of the hearing; and that the appellant (carrier) did not waive its right to dispute the extent-of-injury issue. The carrier appeals the extent-of-injury and disability issues. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed as reformed.

The carrier argues on appeal that the extent-of-injury issue was litigated in a prior CCH proceeding, as that determination was a premise for the hearing officer's decision that the claimant did not have disability. We disagree. The evidence reflects that the only issue presented to the hearing officer in the prior hearing was whether the claimant had disability and that the parties stipulated to the fact that the claimant sustained a lower back injury. Furthermore, the hearing officer who presided over the prior proceeding specifically noted in his decision that compensability was not an issue raised at the benefit review conference or brought forward for resolution at the hearing. Consequently, we do not agree that extent of injury was previously litigated or that the previous determination that the claimant did not have disability prior to January 24, 2002, the date of the prior proceeding, is determinative of the extent of the claimant's compensable injury.

Conflicting evidence was presented at the hearing on the disputed issues in this case. Extent of injury and disability are factual questions for the hearing officer to resolve. Section 410.165(a) provides that the contested case 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer determined that claimant's compensable injury extends to and includes mechanical low back pain and disc disruption syndrome at L4-5 and L5-S1 and that the claimant had disability from March 14, 2002, through the date of the hearing. Nothing in our review of the record indicates that this decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). However, the hearing officer's Finding of Fact No. 2, which states "The claimant had degenerative disc disease (disc disruption syndrome) in his lumbar spine at L4-5 and L5-S1, an

ordinary disease of life” appears to conflict with the hearing officer’s conclusion that the injury extends to and includes the aforementioned conditions. The conclusion is clearly based on Finding of Fact No. 3, which states “The degenerative disc disease (disc disruption syndrome) directly relates to the injury of the _____, because it is the injury of _____.” We strike the portion of Finding of Fact No. 2 which describes the claimant’s injury as “an ordinary disease of life.”

The hearing officer’s decision and order is affirmed as reformed.

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

**JOSEPH LALLO
4550 DACOMA STREET
HOUSTON, TEXAS 77092.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge