

APPEAL NO. 022793
FILED DECEMBER 20, 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 October 1, 2002. The hearing officer determined that the compensable injury of the appellant (claimant) does not include a lumbar herniated nucleus pulposus (HNP) at L4-5, and that the claimant had disability resulting from the compensable injury sustained on _____, from September 12 through September 25, 2000, and from November 18, 2000, through February 27, 2001. The claimant appealed the hearing officer's determinations regarding the extent of the injury and the period of disability. The respondent (carrier) responded, urging affirmance.

DECISION

We affirm.

We first address the claimant's contention that, in her decision and order, the hearing officer erred in discussing the fact that the claimant has been found to have severe stenosis in his lower back and further that this condition may be either congenital or due to degeneration. The claimant complains that stenosis should not have been discussed or considered, as the issue at the hearing was limited to whether the compensable injury included an HNP at L4-5. However, there is nothing in the record to indicate that the hearing officer did not consider the evidence as it pertains to the issues before her. We perceive no error in the hearing officer's statement in her discussion.

The claimant contends the hearing officer erred in determining that the compensable injury does not include an HNP at L4-5. The claimant contends that the hearing officer's determination is against the great weight and preponderance of the evidence, but also states in his brief that "there is little evidence on record" of such an injury. The medical records presented at the hearing show that there is stenosis at L4-5, slight bulging without focal disc protrusion at multiple levels including L4-5, and mild narrowing of the L4-5 neuroforamina bilaterally, but there is no mention of an HNP. In fact, one record presented into evidence indicated there was "[n]o frank herniation." Finding no reversible error, we find that the hearing officer's determination that the claimant's compensable injury does not include an HNP at L4-5 is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining the claimant's period of disability. Whether the claimant had disability and for what period are fact determinations for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The hearing officer's disability

determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

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

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

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge