

APPEAL NO. 022865
FILED JANUARY 2, 2003

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 3, 2002. The hearing officer determined that (1) the respondent/cross-appellant (claimant) sustained a compensable injury on _____; (2) the appellant/cross-respondent (carrier) is not relieved of liability for this claim since the employer had knowledge of a "scratch" injury and the claimant had good cause for failure to report the back injury until the date of notice; (3) the claimant had disability beginning March 1 through April 24, 2002; and (4) the claimant was entitled to change treating doctors under Section 408.022. The carrier appeals these determinations on sufficiency of the evidence grounds. The claimant urges affirmance of the hearing officer's determinations regarding injury, notice, and change of treating doctors. The claimant cross-appeals the disability determination, asserting that disability continued through the date of the hearing. The carrier responds that the claimant did not sustain a compensable injury and, therefore, did not have disability.

DECISION

Affirmed as reformed.

CARRIER'S APPEAL

The hearing officer did not err in reaching the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

CLAIMANT'S CROSS-APPEAL

The claimant contends that the determination that disability ended on April 24, 2002, is based upon an erroneous fact finding by the hearing officer. Finding of Fact No. 2 provides:

FINDINGS OF FACT

2. Claimant was involved in an incident on _____, when a cart with pants on it turned over.

The claimant points out that the claimant's job duties required her to push carts containing up to 400 sheets of plastic used for making credit cards and other similar items; that the claimant was not required to push carts of clothes; and that pushing carts of plastic was significantly heavier work than indicated in the hearing officer's finding of fact. Given the heavy nature of her work, the claimant contends that she was unable to retain her employment because of her compensable injuries and disability continued through the date of the hearing.

Our review of the record reveals that the claimant's duties included moving carts of plastic used for making credit cards and other similar items, as asserted by the claimant, and did not involve pushing carts of clothes. Contrary to the claimant's assertion, however, this error does not affect the hearing officer's determination that the period of disability ended on April 24, 2002. The hearing officer's determination is based upon a report from a required medical examination (RME) doctor, dated April 24, 2002, which provides that the claimant's current pain complaints are "purely subjective without objective correlate." The RME doctor released the claimant to full duty work, effective April 25, 2002. In view of this evidence, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's Finding of Fact No. 2 is reformed to conform to the evidence. The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge