

APPEAL NO. 023023  
FILED JANUARY 15, 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 August 29, 2002, and on October 30, 2002. The record closed on October 30, 2002. With respect to the issues before her, the hearing officer determined that the appellant/cross-respondent's (claimant) compensable injury of \_\_\_\_\_, extends to and includes disc protrusions from L3-4 to L5-S1 of his lumbar spine with radicular pain and that he had disability from February 8 to June 14, 2002, but that he did not have disability from \_\_\_\_\_, to February 7, 2002, or from June 15, 2002, through the date of the hearing. In his appeal, the claimant argues that the hearing officer's determinations that he did not have disability from \_\_\_\_\_, to February 7, 2002, and from June 15, 2002, through the date of the hearing are against the great weight of the evidence. In its response to the claimant's appeal, the respondent/cross-appellant (carrier) urges affirmance of the determinations that the claimant did not have disability for the periods found. In its cross-appeal, the carrier asserts error in the determination that the claimant's compensable injury extends to and includes disc protrusions from L3-4 to L5-S1 with radicular pain and that he had disability from February 8 to June 14, 2002. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant's compensable injury extends to and includes disc protrusions from L3-4 to L5-S1 with radicular pain. That issue presented a question 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). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained his burden of proving that his compensable injury included the disc protrusions from L3-4 to L5-S1 and radicular pain. The factors emphasized by the carrier in challenging that determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in making her credibility determinations. The hearing officer's extent-of-injury determination is supported by the claimant's testimony and the testimony and documentary evidence from Dr. K. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Next, we consider the challenge to the hearing officer's determination that the claimant had disability only from February 8 to June 14, 2002, as a result of his compensable injury. The claimant argues that the hearing officer erred in determining that the claimant did not have disability from \_\_\_\_\_, to February 7, 2002, the period of time he was in (Country) following his injury and before he began treating with Dr. K and was taken off work. The hearing officer determined that the claimant's decision to go to (Country) to tend to his sick child was the reason he did not make his preinjury wages during the period from \_\_\_\_\_, to February 7, 2002. There is evidence to support the hearing officer's determination in that regard and our review of the record does not demonstrate that the determination that the claimant did not have disability from \_\_\_\_\_, to February 7, 2002, is so against the great weight of the evidence as to compel its reversal on appeal. Cain. The hearing officer's determination that the claimant had disability from February 8 to June 14, 2002, is supported by the claimant's testimony and the testimony and documentary evidence from Dr. K. That determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, we will not disturb it on appeal. However, the hearing officer's determination that the claimant did not have disability from June 15, 2002, through the date of the hearing is more problematic. The record reflects that the claimant began treating with Dr. K on February 8, 2002, and that Dr. K took the claimant off work. Dr. K testified that he has maintained the claimant in an off-work status. Similarly, in a letter dated July 15, 2002, Dr. K explained that he would "not release [claimant] to return to any type of work until there is evidence that the neurological deficits have resolved due to the possibility that more neurological compression may cause severe weakness in the right leg or permanent neurological damage." The hearing officer's ending date of disability of June 14, 2002, is the last date the claimant treated with Dr. K. The record reflects that, at the point the claimant stopped treating with Dr. K, the chiropractic treatments were not effective in treating the claimant's condition and the carrier was denying other recommended treatments because of its dispute that the compensable injury extended to the disc protrusions and radiculopathy. In a report dated May 31, 2002, Dr. G, the designated doctor selected by the Texas Workers' Compensation Commission, opined that the claimant had not yet reached maximum medical improvement, noting that there are "ongoing symptoms that further formal medical intervention can be reasonably expected to improve." Specifically, Dr. G recommended a CT myelogram and stated that if the results of that test correlated with the claimant's EMG results and his clinical symptoms, he would benefit from a trial of epidural steroid injections. Dr. G further opined that if the injections resolved the claimant's pain he would be at MMI in three to six months and that if they did not, he should undergo a surgical evaluation. With the evidence in this posture, it is apparent that the claimant stopped receiving medical treatment as a result of the carrier's dispute of the extent-of-injury issue as opposed to stopping treatment because his condition was improving. In the absence of evidence that the claimant's condition improved after June 14, 2002, we find no support for the hearing officer's determination that disability ended as of that date. The hearing officer determined that the claimant's medical condition resulted in disability from February 7 to June 14, 2002, and in order for the disability to have ended thereafter some improvement in the claimant's medical condition would have to be evidenced. There is no such indication of improvement in

the claimant's condition here. Accordingly, we reverse the determination that the claimant's disability ended on June 14, 2002, and render a new decision that the claimant had disability from February 8, 2002, through the date of the hearing.

The hearing officer's determinations that the claimant's compensable injury extends to and includes disc protrusions from L3-4 to L5-S1 and radicular pain, that he did not have disability from \_\_\_\_\_, to February 7, 2002, and that he had disability from February 8 to June 14, 2002, are affirmed. The determination that the claimant did not have disability from June 15, 2002, through the date of the hearing is reversed and a new decision rendered that the claimant had disability from February 8, 2002, through the date of the hearing.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge