

APPEAL NO. 023286
FILED FEBRUARY 6, 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 December 2, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; and that he had disability from that injury beginning on October 11 through November 16, 2001, and from January 23, 2002, and continuing through the date of the hearing. The appellant (self-insured) appealed the hearing officer's injury and disability determinations on sufficiency of the evidence grounds, contending that the compensable accident did not result in any new injury or disability. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant was involved in three motor vehicle accidents (MVA), two that were nonwork-related and one work-related. On September 9, 2001, the claimant injured his back and leg in a nonwork-related MVA. An MRI of the lumbar spine dated September 28, 2001, reflects "disc herniation at L5-S1 with ventral extradural defect and bilateral L5 nerve root impingement." The claimant testified that he was released to light duty on October 9, 2001. On _____, the claimant was involved in a second MVA while in the course and scope of employment. The claimant stated that he felt a sharp pain to his back and that his right leg was numb. An MRI of the lumbar spine dated November 2, 2001, reflects "a 2-3 mm central – right paracentral asymmetric annular bulge at L5-S1 which mildly impresses the ventral aspect of the thecal sac at this level" and at L4-L5 "a minimal 2 mm central annular bulge present at this level." The claimant testified that he was released to work light duty on November 19, 2001. On November 26, 2001, the claimant underwent a discectomy to the L5-S1 area. The claimant returned to work on November 30, 2002. The claimant testified that on January 23, 2001, he was informed by his employer that light-duty work was no longer available to him. On January 23, 2001, while driving home the claimant was involved in the third MVA. An MRI of the lumbar spine dated January 26, 2002, reflects at L5-S1 "the disc is slightly narrow with a 2-3 mm disc bulge, perhaps a small spur extending into both intervertebral foramina" and at L4-L5 "the disc is degenerated with a 2 mm diffuse annular bulge." The claimant contends that he had not worked since January 23, 2002. The self-insured contends that no new injury was sustained in the second MVA, that the second MVA resulted in "virtually no damage to either vehicle," and that spinal surgery was being considered before the second MVA.

Injury and disability are questions of fact for the hearing officer to resolve. Section 410.165(a) provides that the 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 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer specifically commented in the Statement of the Evidence that "the Claimant stated that he thought the MVA on _____ was a new injury because of the increase and severity of the pain and the changes to his body, i.e., before the MVA he could walk and move and work, but after the MVA he could not." When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer.

Whether the claimant had disability is a fact question for the hearing officer to determine from the evidence presented. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The self-insured contends that because the "claimant had returned to work after the _____ on the job [MVA]" he did not have disability from October 11 through November 16, 2001; and because the claimant had a nonwork-related MVA on January 23, 2002, he did not have disability from January 23, 2002, through the date of the hearing. The evidence shows that the claimant returned to light-duty work on November 16, 2001, and that he continued to work until January 23, 2002, when he was notified by his employer that light-duty work was no longer available to him. The hearing officer could conclude that the claimant's release to light duty, and in the absence of a bona fide offer of employment, does not end disability due to the compensable injury. The hearing officer determined that the claimant had disability from October 11 through November 16, 2001, and from January 23, 2002, through the date of the hearing. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We do not disagree with the self-insured's contention that the Appeals Panel reviews legal issues de novo, however, on factual issues the Appeals Panel will not reverse a hearing officer's decision unless it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge