

APPEAL NO. 030032
FILED FEBRUARY 27, 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 (CCH) was held on December 17, 2002. The hearing officer determined that on _____, the respondent (claimant) sustained a compensable injury to his lumbar spine, and that from January 18, 2002, through the date of the CCH the claimant has had disability. The appellant (carrier) appeals, contending that the injury determination is against the great weight of the evidence and that the hearing officer erred in his determination that the claimant had disability because during the relevant period the claimant received short-term and long-term disability benefits. The claimant responds to the appeal, urging affirmance.

DECISION

Affirmed.

INJURY

The carrier accepted a compensable injury of _____, to the claimant's thoracic spine in the form of a thoracic sprain/strain. Whether the claimant sustained a compensable injury to his lumbar spine involved a factual question 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 Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision regarding the claimant's lumbar injury is supported by sufficient evidence. Accordingly, we affirm that portion of the decision and order of the hearing officer.

DISABILITY

The carrier contends that the claimant had no disability and states "the testimony and documentary evidence clearly shows that the Claimant had post-injury earnings through a short-term and long-term disability policy. . . and accrued temporary income benefits should be offset by the amount of payment received under the disability policy." The issue that was certified for the hearing officer was whether the claimant had disability, not whether the carrier was entitled to an offset for payments made to the claimant through other disability plans. With respect to the disability determination of the hearing officer, we have reviewed the matter complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence. Cain, *supra*.

Accordingly, we affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge