

APPEAL NO. 030233  
FILED MARCH 13, 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 January 6, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that the claimant gave timely notice of his injury pursuant to Section 409.001; that the appellant (carrier) had not waived the right to contest compensability of the claimed injury; and that the claimant had disability from September 14 through September 28, 2001, and from December 1, 2001, through the date of the CCH. The hearing officer's determination on the carrier waiver issue has not been appealed and has become final pursuant to Section 410.169.

The carrier has appealed the injury, notice, and disability issues principally on a sufficiency of the evidence basis, stressing evidence which would support a contrary conclusion. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant, an employee of a small elevator repair company, had at least one prior low back injury in September 2000. The claimant was under continuing care for that injury. The claimant testified that on \_\_\_\_\_, he sustained a new low back injury when he "bent over to pick up the cover" of an elevator door. The claimant saw a doctor the next day and he testified that he was off work for about two weeks. The claimant testified that he spoke with the employer's owner within two weeks of the date of injury and told the owner that he had hurt his back working on a particular job. In evidence were MRIs taken in September 2000 and September 2001.

There was conflicting evidence presented on whether the claimant sustained a new injury or whether his complaints were a continuation of his previous back condition, whether the claimant reported a work-related injury, and what the two MRIs showed. The claimant had the burden to prove that he sustained new damage or harm to the physical structure of his body, arising out of and in the course and scope of his employment. Texas Workers' Compensation Appeal No. 992486, decided December 29, 1999. There was conflicting evidence presented with regard to this issue. 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).

The carrier's appeal of the disability issue is mainly premised on the contention that the claimant had some ability to perform "light duty office work" or in the alternative with no compensable injury, the claimant did not have disability. The hearing officer commented that the claimant's testimony established that his compensable injury "was a producing cause of disability." We conclude that the hearing officer's determination is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

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

**BRUCE ROBERT MILLIGAN  
2727 TURTLE CREEK BOULEVARD  
DALLAS, TEXAS 75266-0560.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge