

APPEAL NO. 030404
FILED MARCH 28, 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 January 15, 2003. The hearing officer determined that the appellant (carrier) was not entitled to suspend the respondent's (claimant) income benefits to recoup the previous overpayment of \$4,060.00, and that the claimant had disability from March 22 to July 15, 2002. Although initially presented as a disputed issue, the parties ultimately agreed upon the amount of the claimant's average weekly wage as \$226.88. The carrier appeals the recoupment and disability determinations. The claimant urges affirmance.

DECISION

Affirmed as reformed.

Whether the claimant had disability resulting from his _____, compensable injury was a factual question for the hearing officer to resolve. A disability determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The evidence reflects that an interlocutory order was issued on June 25, 2001, directing the carrier to pay temporary income benefits (TIBs) as of April 19, 2001. Another interlocutory order was issued on September 17, 2001, directing the carrier to continue paying TIBs until the date of the hearing, which was scheduled for October 24, 2001. Following the hearing, a decision was issued, which superseded the interlocutory orders, finding that the claimant had disability beginning _____, through October 24, 2001. On November 7, 2001, the carrier filed a Notice of Refused/Disputed Claim form (TWCC-21), suspending the claimant's TIBs. On March 21, 2002, a benefit review conference was held and the parties entered into an agreement that the claimant did not have disability from October 25 through December 21, 2001, but did have disability from December 22, 2001, through March 21, 2002. On May 31, 2002, the carrier filed another TWCC-21, giving notice that it had resumed the claimant's TIBs after having taken credit for the previous overpayment.

The carrier asserts that it is not known on what basis the hearing officer found the disputed amount of overpayment to be \$4,060.00. We note that the parties stipulated at the outset of the hearing that this was the amount of overpayment in dispute. The carrier is bound by its agreement and the amount will not be considered further.

The hearing officer did not err in determining that the carrier was not entitled to suspend the claimant's income benefits in order to recoup \$4,060.00, the amount reflecting the approximate 22 weeks of purported overpayment of TIBs paid by the carrier to the claimant in accordance with the interlocutory orders that were subsequently superceded by a decision and order modifying the time periods for which the claimant was entitled to TIBs. In the present case, the carrier sought to recoup the TIBs overpayment by suspending TIBs that were later rightfully owed. We have previously held that carriers are generally not entitled to an offset for overpaid benefits against future TIBs that are rightfully owed (Texas Workers' Compensation Commission Appeal No. 92291, decided August 17, 1992), noting that permitting such an offset interrupts a claimant's income benefits. We perceive no error in the hearing officer's determination relating to the suspension of TIBs; however, for clarification purposes and so that the relevant finding of fact comports with the conclusion of law, we reform Conclusion of Law No. 3 to reflect the following:

The Carrier was not entitled to suspend the Claimant's temporary income benefits to recoup the previous overpayment of \$4,060.00.

The hearing officer's decision and order is affirmed as reformed.

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

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge