

APPEAL NO. 030421
FILED MARCH 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 January 29, 2003. The hearing officer determined that the appellant's (claimant) compensable (right ankle and back contusion) injury does not extend to include a disc bulge at C3-C4, C6 to C7, and at L5-S1 (referred to as disc bulges) and that the claimant did not have disability.

The claimant appeals, with the bulk of her appeal asserting that the hearing officer erred in failing to add an issue of carrier waiver. The claimant generally appeals the injury and disability determinations. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, at the CCH and on appeal, asserts that at the benefit review conference (BRC) held on December 18, 2002, she sought to raise the issue of carrier waiver pursuant to Section 409.021(b). No mention is made of that proposed issue in the BRC report. The claimant seems to imply that she was misled by the carrier's representative at the BRC but the facts known to the claimant at the BRC are no different than those advanced at the CCH. The claimant further contends that she filed a "Written Motion to Add an Issue" either on January 9 or January 13, 2003 (more than 15 days prior to the CCH), however, that document is not in evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)) provides that additional disputes may be added by permission of the hearing officer "only on a determination of good cause." Rule 142.7(e)(1) sets out the requirements if the party is represented, one of which is that the request "be made in writing." As noted, no written request is in evidence and the hearing officer verbally ruled that she did not find good cause and denied the request to add the issue of carrier waiver. The hearing officer did not err in her ruling. The claimant's written motion is not before us and we review a hearing officer's determination on good cause, (or lack thereof) on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

On the merits, the claimant, an insurance collection agent, sustained a compensable injury on _____, when she twisted her ankle and fell on her buttocks while collecting premiums for the employer. The claimant reported her injury to her supervisor on April 12, 2001, but continued to work. The original report of injury did not show injury to any claimed body part. The claimant testified that she sought medical attention for her injury in June 2001 but no records are available. Exactly what the

claimant reported subsequently is in dispute. MRIs of the lumbar spine performed on November 2, 2001, and on the cervical spine on February 27, 2002, showed the claimed disc bulges. The claimant continued to work until July 31 or August 8, 2002. The claimant then sought temporary income benefits. The carrier acknowledged the first written notice of the injury was on August 20, 2002. The claimant filed a Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated August 27, 2002, and a second TWCC-41 dated September 27, 2002, alleging injury to "Lower Lumbar, Bilateral Upper Extremities, Right Lower Extremity/Body General." The carrier represented that it accepted liability for the twisted right ankle and a lumbar contusion.

The questions of extent of injury and whether the claimant had disability presented questions 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 fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge