

APPEAL NO. 030435
FILED MARCH 27, 2003

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 023020, decided January 16, 2003, where we remanded the case for the hearing officer to reconsider whether the appellant (claimant) had disability resulting from an injury sustained on _____, and if so, for what period. A hearing on remand was held on February 3, 2003. The hearing officer determined that the claimant did not have disability resulting from an injury sustained on _____. The claimant appealed, arguing that the hearing officer's determination is against the great weight and preponderance of the evidence. The respondent (carrier) responded urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, when he struck his forehead during a fall and received treatment for his head and neck. The claimant was released to light duty on October 15, 2001, and the employer offered the claimant a bona fide offer of employment (BFOE) on October 23, 2001. The claimant worked light duty for only three days, from October 24 to October 26, 2001, because his head and neck pain did not allow him to continue working. The claimant testified that he had not worked from October 27, 2001, to sometime in October 2002. The claimant contends that his average weekly wage was \$392.53, and that the BFOE did not allow the claimant to obtain or retain wages equivalent to his preinjury wages because the BFOE failed to identify the number of days per week the claimant would work, and thus the claimant had disability.

The issue of disability involves a question 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)) 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)). The hearing officer determined that "[a]fter Claimant's date of injury, the Claimant possessed his pre-injury ability to obtain or retain employment at wages equivalent to his pre-injury wage." Nothing in our review of the record demonstrated that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge