

APPEAL NO. 030781
FILED MAY 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 February 28, 2003. The record was held open until March 5, 2003. The hearing officer resolved the disputed issue by deciding that the appellant/cross-respondent (claimant) had disability that began on October 16, 2002, and had not ended as of the date of the CCH. The claimant appeals, arguing that the determination that he did not have disability from September 27 through October 16, 2002, is against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) responded, urging affirmance. The carrier cross-appeals, arguing that the determination that the claimant had disability from October 16, 2002, through the date of the CCH was not supported by sufficient evidence and should be overturned. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____. A prior CCH was held on September 26, 2002, to determine the periods of disability up to that time, if any. The claimant argues that the hearing officer considered the previous hearing officer's evaluation of the evidence to be binding upon him for the period of disability at issue in the present case. We disagree. The hearing officer specifically noted that the functional capacity evaluation of October 16, 2002, was the first viable evidence that the claimant presented to support his claim of disability in the present case.

The claimant had the burden to prove that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issue. 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. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge