

APPEAL NO. 031113
FILED JULY 22, 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 May 6, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from October 30, 2002, and continuing through the date of the CCH.

The appellant (carrier) appeals, contending that the claimant had not met her burden of proof, and that her condition was preexisting. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant had a preexisting 1990 low back injury from which she had never fully recovered and for which she was receiving periodic treatment. The claimant testified that on _____, she tripped and fell, hitting her back and right hip on a doorjamb. The claimant argues that this fall caused a new low back injury, contending that her prior low back injury only caused left leg pain and the 2002 injury now causes right leg pain. The carrier concedes that there was an _____, fall incident, but contends that the claimant sustained no new injury.

The hearing officer charitably commented that, "the evidence was mixed" and that he found the claimant's testimony credible. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel is not a fact finder and we will not substitute our judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 022993, decided January 7, 2003.

Similarly on the issue of disability the hearing officer comments that "[t]his is a close case . . . which again comes down to Claimant's credibility." The carrier argues that the "medical evidence failed to establish disability as a result of a compensable injury versus disability due to her pre-existing condition." The carrier argued that the claimant was not credible, however, as noted previously, the hearing officer, not the Appeals Panel, is the sole judge of credibility. We would also note that disability may be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989).

The carrier also argues the doctrine of spoliation because the claimant failed to produce a preinjury MRI for comparison with a postinjury MRI. The doctrine of

spoliation was discussed in Texas Workers' Compensation Commission Appeal No. 002826, decided January 24, 2001, and by definition requires the intentional destruction or meaningful alteration of a document or instrument. There is no evidence that that was the case here.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge