

APPEAL NO. 031328  
FILED JULY 9, 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 April 24, 2003. With regard to the only issue before him the hearing officer determined that the appellant (claimant) had disability for the period of September 23 and September 24, 2000, and no time thereafter through the date of the CCH.

The claimant's appeal consists of some handwritten notes and a typed request for review. The claimant asserts that the respondent (carrier) failed to prove that he had worked elsewhere during the time the claimant was asserting disability and that he had a serious injury and has been unable to work. The claimant also complains that the hearing officer did not allow him to present his "case to the fullest." The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant, a truck driver, was involved in a motor vehicle accident (MVA) on \_\_\_\_\_. The carrier accepted a compensable head laceration and left leg contusion. There is an emergency room report of \_\_\_\_\_, in evidence. The claimant's supervisor (the employer's part owner) testified that the claimant was off work two days (the days of disability found by the hearing officer), and then returned to work for two days or so before being laid off because the employer had lost a trucking contract. The claimant was apparently involved in another nonwork-related MVA in February 2001. The only off work slips in evidence are dated May 17, 2001, and January 7, 2003, neither of which reference the date of injury or establish that the reason for the off work slips was the compensable injury. Although the claimant maintains that he had a serious injury and "lost conscious for over a year" (TR, page 16) the medical records do not support those allegations.

Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden of proving disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether disability existed for any period is a question of fact for the hearing officer to resolve. Because the claimant had the burden of proof in this case, the carrier was not required to present contradictory evidence in order to prevail. Our review of the record does not indicate that the claimant was not allowed to present his case. Discussion of statutory maximum medical improvement (MMI) is not relevant to the case as MMI is not an issue. The hearing officer's reference to statutory MMI was only to illustrate that temporary income benefits (TIBs) probably would not have been payable after the end

of September 2002 even if the hearing officer had found disability for that period (TIBs are not payable after statutory MMI).

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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge