

APPEAL NO. 031630
FILED AUGUST 7, 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 22, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) had disability beginning on October 5, 2002 through the date of the CCH. The appellant (carrier) appealed, disputing the disability determination and appealing the denial of the hearing officer at the CCH to add an extent-of-injury issue. The claimant responded, urging affirmance and arguing that the hearing officer properly excluded the extent-of-injury issue.

DECISION

Affirmed.

We first address the issue of whether the hearing officer erred in refusing to add the extent-of-injury issue requested by the carrier. The carrier argues that there is sufficient evidence in the record to prove that the extent-of-injury issue was discussed at the benefit review conference (BRC) and thus Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §142.7 (Rule 142.7) does not apply. The carrier additionally argues that the testimony of Dr. S addressed the extent-of-injury issue without objection and therefore the issue should have been added. The carrier cites Texas Workers' Compensation Commission Appeal No. 971765, decided October 17, 1997, as support for their contention that Rule 142.7 does not apply to the instant case. However, in Appeal No. 971765, the BRC request included a request to add the issue in dispute. The BRC report listed the disputed issue and listed various documents concerning the disputed issue, and the parties acknowledged that the carrier insisted that the disputed issue be added at the BRC. In the instant case, the Dispute Resolution Information System (DRIS) notes do not reflect that an extent-of-injury issue was to be considered at the BRC. The claimant's attorney stated that he attended the CCH and acknowledged that the issue of extent-of-injury was brought up, but only to the degree that moments before the parties left the BRC, the carrier representative requested that the extent-of-injury issue be added. The hearing officer properly applied Rule 142.7. We review the hearing officer's ruling denying the carrier's request to add the extent-of-injury issue to the statement of disputes for abuse of discretion, that is, whether the hearing officer acted without reference to any guiding principles. Texas Workers' Compensation Commission Appeal No. 92054, decided March 27, 1992; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We are satisfied that the ruling is not an abuse of discretion.

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." Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August

19, 1993. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer noted in his Statement of the Evidence that the claimant was credible and truthful in the presentation of his claim. As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge