

APPEAL NO. 031980
FILED AUGUST 26, 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 was held on July 1, 2003. With respect to the issues before him, the hearing officer determined that the appellant's compensable injury of _____, does not include an injury to the head causing tinnitus, blurred vision, and/or dizziness and that the accrual date for temporary income benefits (TIBs) is October 23, 2000. The claimant asserts error in each of those determinations. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed

The hearing officer did not err in determining that the compensable injury of _____, does not include an injury to the head causing tinnitus, blurred vision, and/or dizziness. That determination presented 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). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175.

The hearing officer likewise did not err in determining that the accrual date of TIBs is October 23, 2000. In accordance with Section 408.082, TIBs accrue and become payable on the eighth day of disability. In this instance, the claimant testified that she missed four days of work immediately after her _____, compensable injury. The hearing officer also determined based upon the claimant's testimony that she was laid off on October 19, 2000, because she was not wearing a hard hat and that she was not wearing a hard hat because the doctor treating her compensable cervical injury advised her not to wear one. Thus, the hearing officer determined that October 23, 2000, was the eighth day of disability. On appeal, the claimant argues that the accrual date of TIBs was September 1, 2001, the date the carrier began to pay TIBs to the claimant, noting that the carrier did not pay TIBs prior to September 1, 2001. We cannot agree that the hearing officer erred in determining the eighth day of disability in accordance with the claimant's testimony or in determining that that date is the accrual date of income benefits in accordance with the plain language of Section 408.082. Whether or not the carrier has paid all accrued TIBs in this case does not change how the accrual date of income benefits is defined in the statute.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge