

APPEAL NO. 032043  
FILED SEPTEMBER 17, 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 June 24, 2003. The hearing officer determined that the appellant's (claimant) compensable (low back) injury does not include an injury to the neck or left hand, and that the claimant had disability from February 3 through May 16, 2003, but did not have disability from either January 23 to February 2, 2003, or from May 17, 2003, to the date of the CCH. The hearing officer's determinations on extent of injury and no disability from January 23 to February 2, 2003, have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the disability determination as it ends disability on May 16, 2003, contending that he testified to continuing disability and the Work Status Report (TWCC-73) releasing the claimant back to forklift driving was only for four hours a day and not regular duty. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer's decision does not reflect that a translator was present at the CCH, but the record reflects that the claimant testified with the assistance of the translator.

It is undisputed that the claimant, a forklift operator, sustained a compensable injury on \_\_\_\_\_, when the forklift he was operating fell backwards off the end of a truck. The claimant was taken to (clinic) the next day where he was diagnosed with a buttock/low back contusion. The carrier has accepted an undefined low back injury. The clinic treated the claimant and returned the claimant to light duty. The claimant continued working until February 3, 2003. The claimant went to another clinic which also released the claimant to light duty. The claimant testified that on February 3, 2003, he was unable to continue working. The claimant subsequently began treating with (center) and Dr. M. In evidence are a number of progress notes and TWCC-73's taking the claimant off work. The claimant was released to light duty on March 25 through April 25, 2003. In a TWCC-73 dated April 16, 2003, the claimant was again released to light duty where he could operate a forklift with breaks, four hours a day through May 16, 2003, by the center. The hearing officer comments that there "are no further records from the [center] after this date" and that the "evidence was not persuasive that [the claimant] could not return to his pre-injury duties as a forklift driver." The claimant contends that the last light-duty release was only for four hours duty a day and therefore he has continuing disability.

The claimant had the burden of proving that he had disability after May 16, 2003. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer could believe that the light-duty restriction of working four hours a day ended on May 16, 2003. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. Nothing in our review of the record indicates that the hearing officer's decision is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ARGONAUT-SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH A. YURKOVICH  
1431 GREENWAY DRIVE, SUITE 450  
IRVING, TEXAS 75038.**

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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