

APPEAL NO. 032116
FILED SEPTEMBER 18, 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 July 16, 2003. The hearing officer determined that although the appellant (carrier) did not waive its right to dispute the alleged compensability of the respondent's (claimant) injury, the claimant did sustain a compensable injury on _____, and that such injury has resulted in disability since August 5, 2002, through the date of the CCH. The carrier has appealed the adverse findings of fact and conclusions of law and requests that the decision, if affirmed, be reformed to eliminate the sentence "Claimant is entitled to receive temporary income benefits [TIBs] for the duration of his disability, or until his maximum medical improvement date, with accrued and unpaid [TIBs], if any, to be paid to Claimant in a lump sum, together with interest accrued through the date payment is made." The claimant has responded and urges affirmance.

DECISION

Finding sufficient evidence to support the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The carrier has asserted that the hearing officer erred in awarding to the claimant TIBs in her Decision and Order, as it is the carrier's opinion that the claimant received post-injury earnings (PIE) and was therefore not entitled to disability benefits. The matter was litigated at the CCH and the hearing officer clearly found that the amount in question was a loan from the family business, as the claimant testified, and not PIE. The carrier has not asserted any other theory under which claimant is not entitled to TIBs. It is common for the hearing officer to order the payment of benefits, including income benefits, consistent with the decision in the CCH. Any error is harmless.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). 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. 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 have reviewed the injury and disability determinations and conclude that the hearing officer's decision is supported by sufficient evidence. We affirm the decision and order of the hearing officer regarding whether the claimant sustained an injury and had disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge