

APPEAL NO. 032135  
FILED OCTOBER 3, 2003

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 15, 2003, a contested case hearing was held. With respect to the issue before her, the hearing officer determined that the respondent (claimant) had disability, as a result of her \_\_\_\_\_, compensable injury, from February 11, 2003, through the date of the hearing. The carrier appealed the disability determination on evidentiary sufficiency grounds. The carrier also asserts that the hearing officer erred in failing to specifically reverse an interlocutory order. The claimant responds and urges affirmance.

DECISION

Affirmed.

"Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant bears the burden of establishing that a compensable injury was a producing cause of her disability. A disability determination can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). In its appeal, the carrier argues that the hearing officer misapplied the law regarding termination and its effect on disability. Where, as here, an employee sustains a compensable injury, returns to work for her employer, and then her employment is terminated, we must consider whether her termination was for cause. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. If the termination was for cause, the employee must establish her disability after the termination by credible evidence. *Id.* The record shows that the claimant was placed on light duty on February 10, 2003, the day before she was terminated. A functional capacity examination found the claimant capable of performing only light duty work on April 10, 2003, and she was taken off work completely by two different doctors on April 22 and May 28, 2003. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. 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, 224 S.W.2d 660 (1951). The hearing officer was persuaded that the claimant sustained her burden of proving that her compensable injury was a cause of her inability to obtain and retain employment at her preinjury wage despite the fact that her employment was terminated. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the disability determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, we note that the issues of whether the claimant has reached maximum medical improvement and whether the hearing officer should have reversed the interlocutory order issued by the benefit review officer were not before the hearing officer. As such, we find no merit in the carrier's assertion that the hearing officer erred in failing to address those issues.

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret Turner  
Appeals Judge