

APPEAL NO. 032289
FILED OCTOBER 15, 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 August 5, 2003. The hearing officer determined that the respondent's (claimant) compensable (right knee) injury of _____, includes an injury to the low back and that the claimant had disability from November 29, 2002, to the date of the CCH.

The appellant (carrier) appeals, contending that the claimant's testimony "was contradictory and not credible"; that medical evidence supporting the claimant's position was based on an inaccurate history; and that the determinations on disability are not supported by the evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a store cashier, testified how, on _____, she tripped over some shelf dividers and fell. The mechanics of the fall are disputed. The claimant was initially treated for a right knee injury and after a week was returned to work, first at light duty then at regular duty. The claimant was terminated (the cause is disputed) on November 29, 2002. The claimant continued to receive treatment for her right knee injury and while receiving physical therapy, the physical therapist suggested that the claimant's leg pain might be due to a back injury. The claimant was subsequently diagnosed with degenerative disc disease and there is some medical evidence, including a report from the carrier's required medical examination doctor, that the claimant's compensable fall contributed to an aggravation of the degenerative disc disease. The carrier argues that the claimant did not have disability because she had continued to work her regular duties for a period of time and received unemployment insurance benefits after her employment was terminated.

Conflicting evidence was presented on the disputed issues. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of 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 hearing officer's decision is supported by sufficient evidence and is not 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).

The claimant's receipt of unemployment benefits does not necessarily preclude a finding of disability. See Texas Workers' Compensation Commission Appeal No. 92198, decided July 3, 1992, and Texas Workers' Compensation Commission Appeal No. 021212, decided July 1, 2002. In this case the hearing officer specifically found that while receiving unemployment benefits the claimant looked for less strenuous work than

that required by her preinjury job. We conclude that the hearing officer's decision that the claimant had disability from November 29, 2002, through the date of the CCH is not against the great weight and preponderance of the evidence. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge