

APPEAL NO. 032528  
FILED OCTOBER 30, 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 25, 2003. With regard to the three disputed issues the hearing officer determined that the appellant (claimant) has not had disability (as defined in Section 401.011(16)) from April 28, 2003, to the date of the CCH, and that the claimant failed to establish that he is entitled to change treating doctors but that the respondent (carrier) waived its right to dispute the Texas Workers' Compensation Commission (Commission) order approving the change of treating doctors. The carrier waiver issue has not been appealed and has become final. Section 410.169.

The claimant appeals the hearing officer determinations on the issues of disability and entitlement to change treating doctors on the basis that those determinations are not supported by sufficient evidence. The carrier responds, urging affirmation.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on \_\_\_\_\_. The claimant began treating with Dr. B the initial treating doctor. Dr. B took the claimant off work from January 10 through January 26, 2003, (disability between January 10 through April 27, 2003, is not in dispute) and ordered an MRI. The MRI was performed on January 22, 2003. The radiologist who performed the MRI, Dr. B who testified that he reviewed the MRI, and the subsequent treating doctor, all seem to agree that the MRI was essentially normal. Two other doctors, including an orthopedic specialist, opined that the MRI showed a herniated disc at L5-S1. The hearing officer commented "one could easily wonder whether these. . . doctors are looking at the same test." Dr. B released the claimant to return to work with a lifting restriction on January 27, 2003, and the claimant in fact returned to work. Dr. B subsequently released the claimant to work at full duty on March 5, 2003. On April 8, 2003, the claimant's employment was terminated, either because he was sleeping on the job or because he injured his back carrying a ladder and was resting to relieve his back pain. The claimant subsequently changed treating doctors and the new treating doctor took the claimant off work on April 28, 2003. The hearing officer determined that the claimant did not have disability from April 28, 2003, through the date of the CCH. As the hearing officer noted, there was conflicting evidence why the claimant was not working after his employment was terminated on April 8, 2003.

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 in the evidence and determines what facts have been established. The hearing officer's

decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the change of treating doctor, attached to the claimant's Employee's Request to Change Treating Doctors (TWCC-53) was an unsigned letter purporting to be from Dr. B, releasing the claimant to the care of the subsequent treating doctor. Dr. B testified that he did not write that letter; that it had an incorrect letterhead, and that no one else in his office had written that letter. The hearing officer commented (determined) that "the Commission relied heavily on this letter" and "without this letter the Commission would have denied the claimant's request" to change treating doctors. The hearing officer's determinations on this issue are supported by the evidence. However, since the hearing officer's determination that the carrier waived its right to dispute the Commission's order approving the change of treating doctors the Commission's order approving the change remains in effect.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS STREET, SUITE 750  
AUSTIN, TEXAS 78701.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Chris Cowan  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge