

APPEAL NO. 032760
FILED DECEMBER 3, 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 was held on September 4, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury includes a closed head injury and migraine headaches, but does not extend to include L5 radiculopathy and "unspecified injuries to the cervical, thoracic, and lumbar spine"; that the claimant had disability from February 4 through November 18, 2002; and that the appellant (carrier) waived the right to contest compensability of the claimed injury. There were stipulations that resolved the injury and the carrier waiver issues and the extent-of-injury issue was not appealed, therefore, the hearing officer's determinations on those issues have become final pursuant to Section 410.169.

The carrier appeals the disability issue, contending that the claimant had continued to work after her injury until she was laid off on February 4, 2002, that the claimant's first treating doctor did not take the claimant off work, and that the claimant applied for and received unemployment benefits during most of the time for which she claims disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in making his disability determination. That issue presented a question of fact for the hearing officer to resolve. 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 and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant met her burden of proving that she sustained an injury and that she had disability from February 4 through November 18, 2002, when the claimant returned to work, albeit in a part-time position. Disability is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. The hearing officer could, and apparently did, find that the claimant's return to work part time on November 18, 2002, at a lesser wage was not due to the compensable injury but rather other factors. We would also note that disability can be established by the claimant's testimony alone if found credible by the trier of fact. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). The factors emphasized by the carrier in challenging those determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. Nothing in our review of the record reveals that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge