

APPEAL NO. 032880  
FILED DECEMBER 23, 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 June 9 and August 12, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of \_\_\_\_\_, includes disc pathology at L3-4 and C3-4, C4-5, C5-6, and C6-7; that the claimant's compensable injury does not include disc pathology at T6-7, or L1-2, L2-3, L4-5, and L5-S1; and that the claimant had disability beginning July 23, 2002, and continuing through the date of the CCH. The appellant (carrier) appeals, contending that the hearing officer's determinations that the compensable injury includes disc pathology at L3-4 and C3-4, C4-5, C5-6, and C6-7, and that the claimant had disability from July 23, 2002, through the date of the CCH, are contrary to the great weight and preponderance of the evidence. The claimant asserts that the evidence supports the hearing officer's decision on the appealed issues. There is no appeal of the hearing officer's determination that the claimant's compensable injury does not include disc pathology at T6-7 or L1-2, L2-3, L4-5, and L5-S1.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable disc lesion at L3-4; that the claimant did not sustain compensable disc lesions in the thoracic spine or at L1-2, L2-3, L4-5, and L5-S1; and that the claimant had disability beginning July 23, 2002, and continuing through December 18, 2002. As a result of those stipulations, the actual disputed issues to be resolved by the hearing officer were whether the compensable injury includes disc pathology at C3-4, C4-5, C5-6, and C6-7, and whether the claimant had disability after December 18, 2002.

Because the parties orally stipulated at the CCH that the claimant sustained a compensable disc lesion at L3-4, and that he had disability beginning July 23, 2002, and continuing through December 18, 2002, we find no merit in the carrier's appeal of the hearing officer's determination that the compensable injury includes disc pathology at L3-4 or the carrier's appeal of that portion of the hearing officer's determination on the disability issue for the period beginning July 23, 2002, and continuing through December 18, 2002. This is so because Section 410.166 provides in part that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Consequently, we affirm the hearing officer's determination that the compensable injury includes disc pathology at L3-4 and we affirm that portion of the hearing officer's determination on the disability issue for the period of July 23 through December 18, 2002, based on the stipulations contained in the CCH record.

With regard to the hearing officer's determination in favor of the claimant on the issue of whether the compensable injury includes the cervical disc pathology, conflicting evidence was presented on that issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence on the issue of whether the compensable injury includes the cervical disc pathology, the claimant's testimony and the opinions of the doctors who have treated the claimant support the hearing officer's determination on this issue. We conclude that the hearing officer's decision that the compensable injury includes disc pathology at C3-4, C4-5, C5-6, and C6-7 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 (Tex. 1986).

There was also conflicting evidence regarding whether the claimant had disability after December 18, 2002. The hearing officer resolved the conflicts in favor of the claimant by deciding that the claimant had disability, as defined by Section 401.011(16), from July 23, 2002, through the date of the CCH, which includes the disputed period of December 19, 2002, through the date of the CCH. The claimant's testimony and the reports of the surgeon and the current treating doctor support the hearing officer's determination on the disability issue. We conclude that the hearing officer's determination 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, supra.

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICES COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge