

APPEAL NO. 032993
FILED JANUARY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A consolidated contested case hearing was held on October 13, 2003. With respect to (Docket No. 1), the hearing officer determined that the respondent (claimant) sustained a compensable injury on (date of injury for Docket No. 1); that the appellant (self-insured) did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; and that the claimant had disability resulting from the compensable injury beginning on January 21, 2003, and continuing through the date of the hearing. With respect to (Docket No. 2), the hearing officer determined that the claimant sustained a compensable injury on (date of injury for Docket No. 2), and that the claimant had disability resulting from the compensable injury beginning on January 21, 2003, and continuing through the date of the hearing. The self-insured appealed the adverse injury and disability determinations on evidentiary sufficiency grounds. The claimant responded, urging affirmance. The waiver determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained the compensable injuries alleged and that she had disability as a result of the compensable injuries. The claimant testified as to the circumstances of her injuries while performing her work activities for the employer. She related that after lifting some bags of groceries, she had back pain in September 2002, which was sufficiently severe that she sought treatment with a chiropractor. On (date of injury for Docket No. 1), she again had back pain while lifting a frying pan; this pain was so severe that she had to leave work and go immediately to the emergency room. On (date of injury for Docket No. 2), the claimant, while lifting a box of frozen food, experienced back pain that she described as "excruciating" and she again went immediately to the emergency room. The claimant subsequently underwent spinal surgery on January 21, 2003. The Texas Workers' Compensation Commission-appointed required medical examination doctor opined that the claimant's work-related duties "in all probability caused progressive injury to the L5-S1 disc on several occasions, culminating in a severely degenerated/internally disrupted disc." The hearing officer found that the medical evidence along with the claimant's testimony, was sufficient to establish that the claimant sustained a compensable injury.

The hearing officer heard the evidence that was presented on the disputed issues of injury and disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-

Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **a self-insured governmental entity through TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUND** and the name and address of its registered agent for service of process is

TO
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge