

APPEAL NO. 033043
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 contested case hearing was held on October 27, 2003. The hearing officer determined that the respondent's (claimant) current right shoulder condition is a result of his _____, compensable injury, and that he had disability from October 8, 2002, through the date of the hearing with the exception of four days in that period when he did not have disability. In its appeal, the appellant (carrier) asserts error in the hearing officer's disability determination. The carrier also argues that the case must be remanded to the hearing officer because she failed to resolve the entire extent issue before her. In his response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's current right shoulder condition is a result of his _____, compensable injury and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed in part and remanded in part.

The hearing officer did not err in determining that the claimant had disability from October 8, 2002, through the date of the hearing with the exception of four days in that period when he did not have disability. 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 Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained his burden of proving that he returned to work for two days in response to the bona fide offer of employment and then was laid off and advised that there was no more work for him within his restrictions. The hearing officer was acting within her province as the fact finder in crediting the claimant's testimony to this effect over contrary testimony from Ms. D. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's disability determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We agree with the carrier's assertion that the hearing officer failed to resolve the entire issue before her. At the beginning of the hearing, the parties agreed that the hearing officer was to resolve the issue of whether the claimant's _____, included his current right shoulder condition, an injury to his cervical spine, and an injury to his lumbar spine. Transcript pp. 8-9. The parties presented evidence regarding all of the above-mentioned body parts at the hearing. However, the hearing officer's decision

and order makes no mention of the cervical and lumbar spine. Thus, we remand the case back to the hearing officer to resolve the issue of whether the claimant's _____, compensable injury includes an injury to his cervical and lumbar spine.

The hearing officer's determination that the claimant had disability from October 8, 2002, through the date of the hearing with the exception of four days in that period when he did not have disability is affirmed. The case is remanded to have the hearing officer resolve the issue of whether the compensable injury includes cervical and lumbar spine injuries. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge