APPEAL NO. 033046
FILED JANUARY 6, 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 21, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable injury to his mid-back area on _____, that the claimant had disability from February 21 through March 17, 2003, and that the respondent/cross-appellant (carrier) timely filed its contest of compensability. The claimant appealed the hearing officer's injury and disability determinations, asserting that he sustained an injury to his lower back, as well as to his mid-back, and that he is entitled to temporary income benefits (TIBs) from February 21, 2003, through the date of the hearing. The carrier cross-appealed, asserting that the hearing officer's injury and disability determinations are against the great weight and preponderance of the evidence. Both parties responded to the other party's appeal. The hearing officer's carrier waiver determination was not appealed, and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. 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).

The hearing officer determined that the medical evidence reflected that the claimant sustained a compensable injury to his mid-back area, but not an injury to his low-back area. The hearing officer determined that the claimant had disability from February 21 through March 17, 2003, the date the claimant's mid-back injury had resolved. The claimant asserts that he is entitled to TIBs from February 21, 2003, through the date of the hearing, because he had not reached maximum medical improvement (MMI). It appears that the claimant incorrectly equates a certification of MMI with an end to disability. The issues of disability and MMI are distinct and different concepts under the 1989 Act. *See* Texas Workers' Compensation Commission Appeal

No. 91060, decided December 12, 1991. A claimant's disability (i.e., the inability to obtain and retain employment) may end before the claimant reaches MMI and, conversely, disability may continue even after a claimant reaches MMI, although, pursuant to Sections 408.101 and 408.102, entitlement to TIBs ends when MMI is reached. *See* Texas Workers' Compensation Commission Appeal No. 991091, decided July 5, 1999.

Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

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Margaret L. Turner
Appeals Judge