

APPEAL NO. 033169
FILED JANUARY 15, 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 November 6, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury on _____, and that the claimant did not have disability. The claimant appealed, disputing the disability determination. The respondent (carrier) responded, arguing that there is sufficient evidence to support the challenged disability determination.

DECISION

Affirmed.

The claimant testified that she was performing her duties for the employer stacking baggage in an airplane when she felt pain in her back. Although it acknowledges in its response that the hearing officer determined that the claimant sustained a compensable injury, the carrier states it disagrees with that determination. The "Carrier's Response to Claimant's Request for Appellant Review" was timely and will be considered as a response. We note that to the extent that the carrier's stated disagreement of the injury determination could be construed as an appeal, the response was not timely as a request for review (appeal) as having been filed more than 15 days after receipt of the hearing officer's decision. See Section 410.202. Consequently, the hearing officer's decision on the compensable injury issue, not having been timely appealed, has become final pursuant to Section 410.169 and will not be further considered.

The claimant had the burden to prove that she had disability as defined by Section 401.011(16). The claimant contends that the evidence demonstrating the claimant's treating doctor took her off work with no return to work restrictions, and the evidence which showed that light-duty work was not available anyway establishes that the claimant met the definition of disability as a matter of law. The hearing officer was not persuaded that the claimant had disability and noted that the claimant's testimony regarding the disability issues was not credible. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant did not meet her burden of proof. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex.

Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. 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 **AMERICAN HOME ASSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge