

APPEAL NO. 033273
FILED FEBRUARY 12, 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 21, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable (back) injury on _____, that the claimant had disability from October 17, 2002, to February 24, 2003, and that the claimant reached maximum medical improvement (MMI) on April 1, 2003, with a 0% impairment rating (IR). The hearing officer's determinations on MMI and IR have not been appealed and have become final pursuant to Section 410.169.

The appellant (carrier) appeals the injury and disability issues on sufficiency of the evidence grounds. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a mattress builder, testified that he injured his mid and upper back "flipping" a mattress on _____. The carrier points out that the claimant had sustained a very similar compensable injury on (date of similar compensable injury), and another non-work related injury on (date of non-work related injury). There was also evidence that a lay off may have been pending in October 2002. The employer's doctor diagnosed a thoracic myo-fascial strain. Although much of the evidence was in conflict, the parties appear to agree that credibility of the evidence and testimony is the key to this case.

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 the 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 (Tex. Civ. App.-Amarillo 1974, 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The factors emphasized by the carrier in challenging the hearing officer's determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge