

APPEAL NO. 033335
FILED FEBRUARY 13, 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 (CCH) was held on November 19, 2003. The hearing officer resolved the disputed issue by deciding that due to his compensable injury, the respondent (claimant) had disability beginning June 11, 2003, and continuing through the date of the CCH. The appellant (carrier) appeals, arguing that any inability of the claimant to obtain or retain employment at wages equivalent to his preinjury wages was a result of his termination for cause and not his compensable injury. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. At issue was whether the claimant had disability as a result of the compensable injury. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The carrier contends that the only reason the claimant was unemployed after June 9, 2003, was due to his termination after testing positive for amphetamines. There was conflicting evidence on the disability issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was persuaded that the claimant sustained his burden of proving that he was unable to obtain and retain employment at his preinjury wage because of his compensable injury. There was evidence that the claimant's treating doctor took him off work on June 11, 2003. The claimant testified that he had problems carrying out his job duties prior to his termination and there are medical records in evidence dated June 3, 2003, that note the claimant was having difficulty performing his job. The hearing officer could rely on those factors in determining that the claimant had disability beginning June 11, 2003, and continuing through the date of the CCH. It is evident from his findings that the hearing officer believed the claimant's testimony that he did not take illegal drugs and only tested positive due to over the counter allergy medications that were provided by the employer. Nothing in our review of the record reveals that the hearing officer's determination that the claimant had disability for the period specified is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination 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 **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge