

APPEAL NO. 040108  
FILED MARCH 3, 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 December 8, 2003. The hearing officer determined that: (1) the compensable injury of \_\_\_\_\_, includes right carpal tunnel syndrome; and (2) the appellant (claimant) did not have disability resulting from the compensable injury. The claimant appeals the disability determination on legal and evidentiary grounds. The respondent (carrier) urges affirmance. The hearing officer's extent-of-injury determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability resulting from the compensable injury of \_\_\_\_\_. The claimant had the burden to prove that he was unable to obtain and retain employment at wages equivalent to his preinjury wage because of the compensable injury. 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the evidence, the hearing officer could believe that the claimant continued to work at his preinjury wage through May 5, 2003, and any subsequent lost wages were the result of the claimant's termination for cause. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant argues that the hearing officer mischaracterized the parties' stipulation concerning what the claimant's wife would have stated had she testified. We note that the hearing officer read the stipulation on the record, prior to obtaining the parties' agreement. Accordingly, we cannot agree that the hearing officer mischaracterized the evidence.

The claimant also contends that he has disability, as a matter of law, because the carrier paid temporary income benefits (TIBs) for some undetermined period following the date of injury. We note that the parties stipulated that TIBs have not been paid, notwithstanding evidence to the contrary. Pursuant to Section 410.166, an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Additionally, we note that the payment of TIBs is not necessarily dispositive of the issue of disability. See Texas Workers' Compensation Commission Appeal No. 000783, decided May 22, 2000 (where a claimant was found not to have had disability for a period in which TIBs were paid). We perceive no legal error.

The decision and order of the hearing officer is affirmed.

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

**PRENTICE HALL CORPORATION SYSTEM, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge