

APPEAL NO. 040224
FILED MARCH 16, 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 January 7, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury of _____, extends to include the diagnosed left foot necrotizing fasciitis with osteomyelitis and abscess; that the appellant (carrier) is not relieved from liability under Section 409.002; and that the claimant had disability from July 24 through November 4, 2003. The carrier appealed, arguing that the hearing officer's extent-of-injury determination is against the great weight and preponderance of the evidence. The claimant responded, urging affirmance. The hearing officer's injury, notice, and disability determinations have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that he stepped on a wooden pallet, and twisted and bent back his left foot on _____. The claimant reported the injury to his supervisor on July 23, 2003. The claimant sought medical treatment at a hospital emergency room (ER) on July 24, 2003, and was diagnosed with a left foot contusion. The claimant's left foot began to swell and he again sought medical treatment at the ER on July 26, 2003, and he was diagnosed with a left foot sprain. The claimant developed a blister on his left foot and he sought treatment on July 27, 2003, and he was diagnosed with a left foot contusion with an intact and large hematoma and blister. The claimant testified that he was released on all three ER visits and prescribed medication. On July 29, 2003, the claimant was admitted at another hospital's ER for pain and swelling to his left foot. On July 31, 2003, the claimant underwent left foot surgery to drain his blister and amputate his fifth digit. The claimant was discharged from the hospital on August 6, 2003. The discharge summary dated August 6, 2003, reflects that the claimant was diagnosed with left foot necrotizing fasciitis with osteomyelitis and abscess. The claimant contends that he was unable to work due to his left foot injury from July 24 through November 4, 2003.

There was conflicting medical evidence on the disputed extent-of-injury issue. 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The trier of fact 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). Nothing in our review of the record indicates that the challenged determination is 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** 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:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge