

APPEAL NO. 040396
FILED APRIL 14, 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 15, 2003. The hearing officer determined that: (1) the appellant's (claimant) compensable injury of _____, extends to and includes an injury to the cervical and lumbar spine, but does not extend to nor include injury to the head nor thoracic spine; (2) the claimant had disability resulting from the _____, compensable injury, from April 28 through September 27, 2003; and (3) the respondent (carrier) has waived the right to contest compensability of the cervical and lumbar injuries; however, the carrier "has not waived the right to contest compensability of the claimed head and thoracic spine injuries as those claimed injuries are not compensable." The extent-of-injury and carrier waiver issues have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the disability determinations pointing out that it was Dr. Ku that established disability rather than Dr. Ka and that there was no evidence to support the hearing officer's ending date of disability. The file does not contain a response from the carrier.

DECISION

Affirmed, as reformed.

The hearing officer's Statement of the Evidence, Findings of Fact, and Conclusions of Law reflect that the claimant sustained a compensable injury on _____. We note that the hearing officer erroneously refers to the year of the injury as 2003, instead of 2002, in the decision. The decision is reformed to read that the claimant sustained a compensable injury on _____.

The claimant, a dispatcher, sustained a compensable injury on _____, when her chair rolled out from under her causing her to fall to the floor and flipping the chair on top of her. The claimant saw the company doctor who released the claimant to return to work without restrictions on June 19 and July 3, 2003. The claimant continued to work her regular duties, although she testified she was in pain and that the employer accommodated her by allowing her time off to see the doctor or go home early when she was not feeling well. The claimant continued to work until January 6, 2003, when she was laid off ostensibly due to a reduction in force. The claimant's severance paid her through January 31, 2003. The claimant changed treating doctors from the company doctor to Dr. Ku on April 26, 2003. Dr. Ku in a series of Work Status Reports (TWCC-73) took the claimant off work beginning April 28, 2003. The last TWCC-73 in evidence took the claimant off work from August 27 to September 27, 2003. A physical therapy note dated November 10, 2003, is the last indication of physical therapy. The claimant testified that she is unable to work due to her

compensable injury. The hearing officer determined that the claimant had disability (defined in Section 401.011(16)) from April 28 through September 27, 2003, which corresponded with the TWCC-73s in evidence.

The claimant contends that she had disability from February 1, 2003, and continuing through the CCH and that disability can be found based on claimant's testimony alone (if believed by the hearing officer). Although disability can be established by a claimant's testimony alone, the testimony of the claimant, as an interested party, only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex.Civ.App.-Amarillo 1973, no writ). The claimant also contends that the ending date of disability must be supported by some evidence. The burden was on the claimant to prove the period of disability claimed. In this case, the ending date of disability is supported by Dr. Ku's last TWCC-73. Disability is a factual issue for the hearing officer, who is the sole judge of the weight and credibility of the evidence, to resolve. Section 410.165(a). In this case, we find that the hearing officer's decision is supported by the evidence. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to compel its reversal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant takes issue with the fact that the hearing officer failed to mention testimony in the Statement of the Evidence paragraph. In her decision, the hearing officer states that she "considered all evidence presented in making the Findings of Fact and Conclusions of Law upon which this decision is based." We have previously stated that there is no requirement that the hearing officer discuss all the evidence. See Texas Workers' Compensation Commission Appeal No. 91076, decided December 31, 1991; Texas Workers' Compensation Commission Appeal No. 92185, decided June 18, 1992. We perceive no error.

The decision and order of the hearing officer are affirmed, as reformed.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**JOHN D. KING
901 SOUTH MOPAC, BUILDING 4, SUITE 160
AUSTIN, TEXAS 78746.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge