

APPEAL NO. 040739
FILED MAY 19, 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 March 4, 2004. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant (claimant) was in the course and scope of his employment at the time of his motor vehicle accident on _____, and, thus he sustained a compensable injury; that he had disability from July 4 through September 27, 2003; and that the compensable injury does not include degenerative disc disease at L4-5 and L5-6 with small posterior protrusions of both levels. In its appeal, the appellant/cross-respondent (self-insured) asserts error in the determinations that the claimant was in the course and scope of his employment at the time of his accident, that he sustained a compensable injury, and that he had disability for the period found. The claimant did not respond to the self-insured's appeal. In his cross-appeal, the claimant argues that the determination that the compensable injury does not include the degenerative disc disease at L4-5 and L5-6 is against the great weight of the evidence. In its response to the claimant's cross-appeal, the self-insured urges affirmance of the extent-of-injury determination.

DECISION

Affirmed.

The claimant is a firefighter for the self-insured. On _____, the claimant was driving in a department vehicle to his home to eat lunch. As the claimant came to an intersection and stopped at a red light, he saw that two vehicles had been involved in an accident and were in a parking lot to his left. The claimant used the radio in his vehicle to call for a police officer. The claimant stated that after he made the call and while he continued to be stopped at the red light a pickup truck came up behind him and struck his vehicle. The claimant stated that he had intended to go over to the first accident scene when the light turned green to see if anyone needed an ambulance; however, he did not do so because of his accident. The claimant maintained that he was in the course and scope of his employment at the time of his accident because fire department policy required that when he was in uniform and driving a department vehicle, he was required to stop and render aid where, as here, he saw an accident had occurred.

The hearing officer determined that the claimant was in the course and scope because he "had reported the accident and was in the process of driving to the location of the vehicles involved in the accident when his vehicle was struck from behind. When this collision occurred, Claimant was performing his Fire Department duties and was in the course and scope of his employment." The hearing officer did not err in so finding. As the fact finder, the hearing officer could believe that fire department policy required the claimant to render aid in this instance and that the claimant was in the process of doing so when his vehicle was struck from behind. Nothing in our review of the record

demonstrates that the hearing officer's determination that the claimant was in the course and scope of his employment at the time of his _____, accident is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). This is so even though another fact finder may well have drawn different inferences from the evidence and reached a different result. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer likewise did not err in determining that the claimant had disability from July 4 to September 27, 2003, or that the claimant's compensable injury does not include degenerative disc disease at L4-5 and L5-6. Those issues presented factual questions for the hearing officer. He was acting within his province as the fact finder in determining that the claimant sustained his burden of proving that he had disability for the period found but did not sustain his burden of proving that his compensable injury included degenerative disc disease. Our review of the record does not reveal that the challenged determinations are so contrary to the overwhelming weight of the evidence as to compel their reversal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**EF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge