

APPEAL NO. 040749  
FILED MAY 21, 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 1, 2004. With respect to the issues before her, the hearing officer determined that the claimant's compensable injury of \_\_\_\_\_, included injury to the right knee diagnosed as probable acute patellar subluxation spontaneously reduced; that the claimant had disability from October 22 through December 21, 2003; and that she did not have disability from September 27 through October 21, 2003 or from December 22, 2003, through the date of the hearing. In her appeal, the claimant argues that the hearing officer's determinations that she did not have disability from September 27 through October 21, 2003, or from December 22, 2003, through the date of the hearing are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability from September 27 through October 21, 2003, or from December 22, 2003, through the date of the hearing. The claimant had the burden to prove the periods of disability claimed and the disability issue presented a question of fact for the hearing officer. There was conflicting evidence presented on the disputed issues. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer found that for the periods at issue, the claimant's inability to earn her preinjury wage was due to the fact that her employment had been terminated for cause and not a result of her compensable injury. The hearing officer was acting within her province as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251-2237.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge