APPEAL NO. 040949
FILED JUNE 15, 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 (CCH) was held on March 30, 2004. With regard to the only issue before him, the hearing officer determined that the respondent (claimant) had disability beginning September 5, 2003 (all dates are 2003 unless otherwise noted), and continuing through the date of the CCH.

The appellant (carrier) appeals on two points: (1) that the hearing officer's decision is not supported by sufficient evidence; and (2) that the hearing officer improperly reframed or restated the disputed issue. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed as a ramp agent (baggage handler) at an airport. The parties stipulated that the claimant sustained an unspecified compensable right upper extremity injury on _____. The claimant was returned to modified duty with certain lifting, pushing, pulling, and reaching restrictions on July 8 by the employer's clinic (clinic). Subsequently the claimant was returned to regular duty on July 15 by the clinic. The claimant continued to work his regular duties until July 24 when he went to work for another employer (Employer 2) at a higher wage with the promise of overtime. The claimant continued to work for Employer 2 until September 4 when he was laid off due to a reduction in force. The claimant was referred to Dr. B, a hand specialist, on August 27 by the clinic. Dr. B, on a Work Status Report (TWCC-73), released the claimant to light duty with a lifting restriction. After the claimant was laid off on September 4, he applied for and received 10 weeks of unemployment benefits. The claimant testified that he continued to look for work. The claimant's treating doctor took the claimant off work on September 26. The claimant was subsequently examined by the carrier's required medical examination (RME) doctor, who in a report dated October 8 was of the opinion that the claimant should be continued on "light duty restrictions over the next six months." Peer record reviews had a contrary opinion.

The hearing officer noted that with the only exception of the clinic's July 15 release to regular duty all the other doctors that had actually examined the claimant had either had the claimant off work or on light duty. The hearing officer cited the principles that a light duty release is evidence that disability continues and that an injured employee may go in and out of disability. The hearing officer also appeared to rely heavily on the carrier's RME doctor's report. Different inferences can be drawn from the evidence and it is the hearing officer who is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged

with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Even though another fact finder may have reached a different conclusion on the same evidence, that alone is not a sound basis on which to reverse the hearing officer's decision. Salazar, *et al*. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The issue reported out of the benefit review conference was whether the claimant had disability "from 9-26-03 through 12-30-03." The claimant requested that the hearing officer "amend" (reform) the issue to state an earlier beginning date of disability. After some discussion, the hearing officer reformed or restated the issue to be whether the claimant had "disability. . . and if so, for what period(s)?" over the carrier's objection. The Appeals Panel has long noted Texas workers' compensation dispute resolution proceedings are not governed by the strict rules of pleading. Texas Workers' Compensation Commission Appeal No. 950061, decided February 24, 1995. In that regard we have stated that we may affirm a factual determination of a hearing officer on any theory reasonably supported by the evidence (Texas Workers' Compensation Commission Appeal No. 971637, decided September 26, 1997). We hold that the hearing officer did not err in reforming the issue to include a broader, more open-ended period of disability.

We conclude that the hearing officer's determination is not erroneous as a matter of law and is not 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).

We affirm the hearing officer's decision and order.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Margaret L. Turner
Appeals Judge