

APPEAL NO. 041103
FILED JUNE 30, 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 April 20, 2004. The hearing officer decided that the respondent (claimant) had disability from October 17, 2003, and continuing through the date of the CCH. The appellant (self-insured) timely appealed on evidentiary grounds. There is no response in the appeal file from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's period of disability was October 17, 2003, through the date of the CCH. Section 401.011(16) of the 1989 Act defines disability as the claimant's inability, because of a compensable injury, to obtain and retain employment at wages equivalent to those earned preinjury. Evidence in the record supporting the hearing officer's decision includes medical work-release forms showing the claimant as having disability from October 16, 2003, through January 1, 2004; a November 19, 2003, consultation report from Dr. T, a hand specialist; and a functional capacity exam (FCE) performed on January 7, 2004. The claimant did not testify that he was unable to obtain or retain employment at his preinjury wages beyond January 22, 2004. However, the hearing officer may infer disability from the documentary evidence that the claimant never received the work hardening that both Dr. T and the FCE recommended the claimant undergo prior to his release to return to work, and that the claimant continued to be unable to work as he had been placed in an off-work status without ever being released from that status.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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). This tribunal will not disrupt the contested findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a certified self-insured)** 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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge