

APPEAL NO. 041164
FILED JULY 6, 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 January 27, 2004. In Texas Workers' Compensation Commission Appeal No. 040418, decided April 7, 2004, the Appeals Panel reversed the hearing officer and rendered a new decision that the compensable injury includes disc herniations at C4-5 and C5-6 and remanded the case to the hearing officer on the issue of disability, if any, to include the cervical disc herniations. A CCH on remand was held on April 28, 2004. The hearing officer determined that the respondent (claimant) had disability beginning on July 22, 2003, and continuing to the date of the CCH on remand.

The appellant (carrier) appeals, contending that the claimant continued to work regular duties from the date of injury, _____, to December 6, 2002, when she was laid off in a reduction of force and then the claimant drew unemployment benefits until July 22, 2003, and that the Work Status Reports (TWCC-73) taking the claimant off work do not list the dates when the claimant was unable to work. The file does not contain a response from the claimant.

DECISION

Affirmed.

The facts are set out in Appeal No. 040418, *supra*, and will not be repeated. Disability is defined in Section 401.011(16). In evidence is a TWCC-73 from Dr. D, the treating doctor, placing the claimant on light duty from May 22 through September 16, 2003, and there was no bona fide offer of employment from the employer (in fact the claimant had been laid off the prior year). In addition, there is a TWCC-73 from Dr. C, a neurosurgeon, taking the claimant off work. That report, with whatever shortcomings it may have, in conjunction with another TWCC-73 dated April 20, 2004, taking the claimant off work altogether with a notation of recommended cervical surgery, is sufficient to support the hearing officer's decision, particularly in the absence of any medical evidence to the contrary. We would also note that disability can be established by the claimant's testimony alone if found credible by the trier of fact. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). The factors emphasized by the carrier in challenging that determination on appeal are the same factors emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. Nothing in our review of the record reveals that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb that determination on appeal.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge