APPEAL NO. 041298
FILED JULY 12, 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 May 3, 2004. The hearing officer determined that: (1) the compensable injury of _____, extends to and includes herniated discs at the C4-5 and C5-6 intervertebral levels of the respondent/cross-appellant's (claimant) cervical spine; and (2) the claimant had disability from June 14, 2002, through October 27, 2003. The appellant/cross-respondent (carrier) appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred by admitting Claimant's Exhibit No. 3. The claimant urges affirmance of the extent-of-injury determination. The claimant cross-appeals the hearing officer's disability determination, asserting that disability continued through the date of the hearing. The carrier responds that the claimant did not have disability.

DECISION

Affirmed.

We first address the carrier's assertion that the hearing officer erred by admitting Claimant's Exhibit No. 3. The carrier objected to the admission of these documents at the hearing, asserting that they were not timely exchanged within 15 days after the benefit review conference as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). The claimant's attorney conceded that the exhibits were exchanged beyond the 15-day exchange period but asserted good cause; i.e., the medical reports were exchanged as soon as they became available. The hearing officer found that the claimant exercised due diligence in producing the documents and overruled the carrier's objection. Upon review of the record, we cannot conclude that the hearing officer abused his discretion in admitting Claimant's Exhibit No. 3. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations 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 his appeal, the claimant asserts that disability should continue until he has been certified at maximum medical improvement (MMI). We have previously held that the issues of disability and MMI are distinct and different concepts under the 1989 Act.

Disability (i.e., the inability to obtain and retain employment) may end before the claimant reaches MMI and, conversely, disability may continue after a claimant reaches MMI, although entitlement to temporary income benefits ends when MMI is reached, pursuant to Sections 408.101 and 408.102. *See* Texas Workers' Compensation Commission Appeal No. 991091, decided July 5, 1999.

The decision and order of the hearing officer is affirmed.

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 STREET, SUITE 750
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge