APPEAL NO. 041415
FILED JULY 26, 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 19, 2004. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) had disability, as a result of his _____, compensable injury, from November 18, 2003, through May 13, 2004. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant had disability for the period found. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability from November 18, 2003, through May 13, 2004, as a result of his compensable injury. That issue presented a question 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). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the disputed issue and the hearing officer was acting within his province as the fact finder in giving more weight to the evidence tending to demonstrate that the claimant had disability for the period found. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the disability determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We find no merit in the carrier's assertion that the hearing officer in this instance was precluded from determining that the claimant had disability for the period found because a different hearing officer had previously determined that the claimant did not have disability in the period from July 11 through November 17, 2003. The hearing officer in the prior case identified the nature of the injury as a lumbar sprain/strain and, thus, concluded that the claimant only had disability from May 16 through July 10, 2003, as a result of that injury. However, although the hearing officer in that case identified the nature of the injury as she saw it, she did not resolve an extent-of-injury issue and/or limit the scope of the injury because there was no such issue before her, thus, she did not have the authority to do so. There was likewise no extent-of-injury issue presented to the hearing officer in this hearing; however, in the same way that the first hearing officer had to identify the nature of the injury in order to resolve the disability issue, the hearing officer herein also had to identify the nature of the injury in order to resolve the issue presented to him. He was persuaded that the claimant's injury was more than a sprain/strain and he was acting within his province as the fact finder in so finding.

The carrier also stated that it "considers the pre-hearing procedures in this matter to be a mockery of the Workers' Compensation system in Texas." Specifically, the carrier contends that the claimant was dissatisfied with the outcome of the prior hearing and requested a different hearing officer for this hearing and that the request was granted. Our review of the record does not support the assertion that the claimant was permitted to "'shop' for a sympathetic hearing officer" as the carrier contends. In addition, the record does not demonstrate bias on the part of the hearing officer in favor of the claimant. We cannot agree that the hearing officer's statement that different fact finders "could look at the same set of facts and come up with different results" demonstrates such bias. Rather, we believe that the statement is more in the nature of an acknowledgment that reasonable minds might differ as to the interpretation of the evidence before them. In addition, we note, that either of those differing interpretations would be affirmable under a sufficiency standard or review. *See* Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.)

The hearing officer's decision and order are affirmed.

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

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

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge