APPEAL NO. 041541
FILED AUGUST 4, 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 25, 2004. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include or extend to C4-5 and C5-6 central posterior disc herniations, or L5-S1 posterior bulging/protrusion; that the claimant only had disability for the periods from July 11 through July 18, 2001, July 27 through August 12, 2001, and August 20 through October 30, 2001; that the claimant reached maximum medical improvement (MMI) on January 29, 2003; and that her impairment rating (IR) is zero percent. In her appeal, the claimant asserts error in each of those determinations. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury does not include herniations at C4-5 and C5-6 and/or bulging/protrusion at L5-S1 and that the claimant's disability was limited to the periods from July 11 through July 18, 2001, July 27 through August 12, 2001, and August 20 through October 30, 2001. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer. There was conflicting evidence presented on the disputed issues. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained her burden of proving that her compensable injury extended to include the herniated discs at C4-5 and C5-6, and the bulge/protrusion at L5-S1, or that she had disability for any other periods. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determinations are so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the hearing officer's extent-of-injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The success of the claimant's challenge to the MMI and IR determinations are dependent upon the success of her extent-of-injury argument in that she argued that the designated doctor had not considered the full extent of her injury in certifying MMI and assigning an IR. Given our affirmance of the determination that the compensable injury does not extend to include the disc pathology at C4-5, C5-6, and L5-S1, we likewise affirm the determination that the claimant reached MMI on January 29, 2003, with an IR of zero percent.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIRE & CASUALTY INSURANCE COMPANY OF CONNECTICUT** 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.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge