

APPEAL NO. 041911
FILED SEPTEMBER 27, 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 July 5, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the date of injury (DOI) was _____; and that the claimant had disability beginning on March 30, 2002, and continuing through the date of the CCH. The DOI issue has not been appealed and the determination that the DOI is _____, has become final pursuant to Section 410.169.

The appellant (self-insured) appeals the injury and disability issues, pointing to conflicting evidence, asserting no injury occurred and that the claimant either had no disability or did not have disability for the time determined by the hearing officer. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed

The claimant testified that on the DOI he "felt kind of a pop and a stinger" in his neck pulling down a five gallon bucket of paint from an overhead area. The claimant testified that he worked the next day and eventually sought treatment with Dr. B on April 3, 2002. Dr B's records are not clear as to what his diagnosis was but he referred the claimant for an MRI which was performed on April 19, 2002, and which showed some disc bulges and protrusions at various levels of the cervical spine.

The self-insured points to some of Dr B's reports and letters of clarification to show that the doctor thought that no specific work injury occurred (although the doctor says the claimant's degenerative disc disease was aggravated by the injury). The self-insured also points to inconsistencies in the medical histories and the claimant's testimony. In any event there is ample evidence of an injury (chiropractic records diagnose a cervical strain/sprain) and it is within the province of the hearing officer to determine whether the claimant sustained a compensable injury as alleged. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving conflicts and inconsistencies in the evidence and deciding what facts the evidence established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's determination on this issue is sufficiently supported by the evidence.

The claimant testified that he had not worked (for the self-insured) after March 30, 2002, and that he never earned his preinjury wage. We would note that the evidence never established what the claimant's average weekly wage was. The self-

insured refers to its Exhibit D contending that it showed that “the Claimant earned more than his pre-injury wage during the week ending April 13, 2002.” Our review of that exhibit, however, shows the last pay date as “03/28/2002” for the period ending “03/30/2002.”

The self-insured also, referring to exhibit D, contends that the claimant “received full wages for the ten days beginning on April 26, 2002,” however, our review indicates that the claimant received short-term disability benefits (STD) for the period ending on April 26, 2002. The claimant testified that he received both STD and long-term disability (LTD) benefits. However, there was no testimony or evidence whether those STD and LTD were post-injury earnings pursuant to Tex. W.C. Comm, 28 TEX. ADMIN. CODE § 129.2 (Rule 129.2) and in fact there was no reference at all to Rule 129.2. The claimant admittedly worked for another employer from sometime in August 2002 to around October 15, 2002. How much the claimant was paid, and how he was paid, is unclear and in dispute. The self-insured refers us to an exhibit which has a copy of the claimant’s Federal W2 form for the year 2002, however, we are not able to ascertain with any degree of certainty that those wages exceeded the claimant’s preinjury wage because of the uncertain time frames involved.

Finally, the self-insured asserts that the date of “statutory maximum medical improvement” (MMI) was March 30, 2004, citing Section 401.011(30)(B). However, Section 401.011(30)(B) provides that MMI is 104 weeks “from the date on which income benefits begin to accrue,” certainly a date which was not identified or agreed upon. The self-insured argues that “the hearing officer has awarded disability benefits past the date of statutory [MMI].” The hearing officer actually ordered the self-insured to pay benefits in accordance with the 1989 Act and Texas Workers’ Compensation Commission (Commission) Rules. Further, we note that disability as defined in Section 401.011(16) can extend past MMI but it is temporary income benefits that end at MMI.

We do reform the hearing officer’s determination on disability to find that disability began on March 31, 2002, rather than March 30, 2002, because the claimant clearly testified that he worked on March 30, 2002, and there is no documentary or other evidence to contradict that testimony.

We have reviewed the complained-of determinations and conclude that the hearing officer’s determinations are not 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 (Tex. 1986).

We affirm the hearing officer's decision and order as reformed.

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge