

APPEAL NO. 042180
FILED OCTOBER 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 August 2, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability as a result of the alleged injury of _____. The claimant appealed the injury and disability issues on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant, a customer service representative for a package shipping company, testified that she sustained a low back injury on _____, when she was stacking some packages in the back of a truck. Although the claimant testified that she reported her claimed injury to her immediate supervisor at that time, that assertion is disputed and denied by the supervisor. The claimant continued working until January 29, 2004, when she took a doctor's note to her employer taking her off work. The claimant did not report to work on January 26 or January 27, 2004. On January 27, 2004, she actually spoke with a supervisor and told her that she was not feeling well but did not mention an injury. The carrier asserts that the claimed injury was first reported on January 29, 2004, after a lengthy meeting on January 28, 2004, during which the claimant was warned about her performance. There had also been a meeting on January 16, 2004, to warn the claimant about her performance and she had been sent home on January 23, 2004, following a discussion about a problem between the claimant and a coworker which had taken place the evening of _____. The hearing officer commented that the claimant's testimony "was not persuasive."

The questions of whether the claimant sustained a compensable injury and whether she had disability presented 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). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer could believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are 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 those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

Judy L. S. Barnes
Appeals Judge
CONCUR:

Robert W. Potts
Appeals Judge