

APPEAL NO. 042556
FILED NOVEMBER 24, 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 29, 2004, with the record closing on September 13, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not have disability from March 18 through July 29, 2004. The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) responds that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury. The parties agreed that the issue to be decided by the hearing officer was whether the claimant had disability after March 18, 2004. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant's current treating doctor reported that the claimant is unable to work as of March 18, 2004. However, the claimant's initial treating doctor had previously reported that the claimant was able to return to work without restrictions in September 2003, and the carrier's required medical examination doctor reported in July 2004, that there was no reason that the claimant should not be able to return to full-duty work. The claimant asserts that he has disability because he is not at maximum medical improvement (MMI). We note that MMI was not an issue at the CCH and that MMI, which is defined in Section 401.011(30), and disability are different concepts under the 1989 Act. Because MMI and disability are defined differently, an injured employee may not have reached MMI, but not have disability as defined by Section 401.011(16). In the instant case, the hearing officer applied the definition of disability and found that the claimant's compensable injury was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to the preinjury wage from March 18 through July 29, 2004. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge