

APPEAL NO. 022499
FILED NOVEMBER 4, 2002

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 August 22, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from May 16, 2002, continuing through the date of the CCH. The appellant (carrier) appeals those determinations. There is no response from the claimant contained in our file.

DECISION

Affirmed.

The carrier contends that there is insufficient support in the record to affirm the hearing officer's determinations regarding injury and disability. The carrier further contends that even if there is evidence to support the injury determination, the hearing officer erred in her determination that the claimant had disability after June 1, 2002, because the claimant planned to retire on that date.

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." Whether disability exists is generally a question of fact and can be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In Texas Workers' Compensation Commission Appeal No. 992073, decided October 25, 1999, we stated the following:

The fact that a claimant retires does not automatically preclude a finding of disability. Retirement is a factor for the hearing officer to consider in evaluating whether a claimant meets the statutory definition of disability, but the retirement from the job where a claimant was injured does not as a matter of law end disability. Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997. Rather, a claimant need only prove that the compensable injury is a cause, not necessarily the only cause, of the inability to earn the preinjury wage.

Therefore, the claimant's retirement was a factor for the hearing officer to consider in evaluating whether the claimant had disability but the claimant's retirement does not end disability as a matter of law.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determinations are sufficiently

supported by the record and 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge