

APPEAL NO. 030972
FILED JUNE 12, 2003

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 022315, decided October 30, 2002. The hearing officer did not hold a hearing on remand. The purpose of the remand was to have the hearing officer resolve the actual disputed issue before him, namely whether the appellant (carrier) acted properly in suspending temporary income benefits (TIBs) from March 8 to April 8, 2002, pursuant to Section 408.0041(h) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(c) (Rule 130.6(c)). On remand, the hearing officer determined that the respondent (claimant) "had good cause for discontinuing his participation in the examination by [Dr. G], because the doctor was hurting him, so the Carrier did not act properly in suspending [TIBs]." In its appeal, the carrier asserts error in that determination. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier did not act properly in suspending TIBs for the period from March 8 to April 8, 2002, pursuant to Section 408.0041(h) and Rule 130.6(c). The hearing officer specifically determined that Dr. G's examination of the claimant caused the claimant pain. The evidence on the nature of the reason as to why the designated doctor's examination of the claimant ended was much disputed. The carrier introduced evidence from Dr. G indicating that he asked the claimant to leave out of safety concerns for himself and his staff because the claimant was belligerent, abusive, and used foul language. However, the claimant denied that he became belligerent and abusive and maintained that Dr. G asked him to leave after he complained that the doctor's examination was hurting him. It was a matter for the hearing officer to resolve the conflicts and inconsistencies in the evidence and to determine what facts were established. The hearing officer was acting within his province as the sole judge of the weight and credibility of the evidence under Section 410.165(a) in finding that the claimant had good cause for discontinuing his participation in the designated doctor's examination because the examination was causing him pain. Nothing in our review of the record reveals that the hearing officer's good cause determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Thus, the hearing officer did not err in determining that the carrier did not act properly in suspending TIBs because Section 408.0041(h) and Rule 130.6(c) do not provide for such suspension where the claimant has good cause for failing to submit to the examination. Finally, we note that although another fact finder may well have made different determinations based on the evidence in the record, that does not provide a basis for us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

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

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge