

APPEAL NO. 033186
FILED FEBRUARY 2, 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 October 30, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that he had disability beginning on June 10, 2003, and continuing through the date of the CCH. The appellant (carrier) appealed both the injury and disability determinations on evidentiary grounds and urged the Appeals Panel to reverse and remand for clarification, or in the alternative reverse and render that the claimant was not an employee of the employer, that he did not sustain a compensable injury on _____, and that he did not incur any disability in this claim. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

A review of the record reflects that the parties orally stipulated that the claimant was employed by the employer on or about _____. Section 410.166 provides in pertinent part that an oral stipulation of the parties that is preserved in the record is final and binding. We find no merit in the carrier's contention that the hearing officer erred in finding that the claimant sustained a compensable injury on or about _____. The carrier argued that any assertion that the claimant sustained a compensable injury on an alternative date during his actual employment with the employer is improper and unsupported by the evidence. The claimant testified that his shift began at 7:00 p.m. and the shift usually ended at 3:30 or 4:00 a.m. We note that the hearing officer specifically determined in both Conclusion of Law No. 3 and the Decision that the claimant sustained a compensable injury on _____.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). The carrier contends there was evidence that the claimant did not perform any work on _____ and that the medical records show inaccuracies in the information related to the doctors who treated the claimant. Conflicting evidence was presented on the disputed issues of injury and disability.

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. The hearing officer noted that the claimant's testimony was credible and that he had continued to require medical treatment having been diagnosed as having disc herniations at L4-L5 and L5-S1. We conclude that the hearing officer's determinations on the appealed issues of compensable injury and disability are supported by sufficient evidence 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**MR. RUSSELL RAY OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge