

APPEAL NO. 033212
FILED JANUARY 14, 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 November 13, 2003. The hearing officer determined that none of the appellant's (claimant) compensable injuries in any of the three dockets include an injury to the thoracic area consisting of a herniated nucleus pulposus and disc protrusion at the T8-9 level, disc desiccation and disc narrowing at the T9-10 level, anterior disc bulge and Schmorl's nodes at T10-11 level, Schmorl's nodes at the T11-12 level, or a thoracic sprain/strain. With regard to (Docket No. 1), the hearing officer determined that because the claimant's compensable injury does not extend to include an injury to the thoracic spine, the claimant did not have disability. The claimant appeals and asserts that his (date of injury for docket. no. 1), compensable injury, which is the subject of Docket No. 1, includes an injury to his thoracic spine and that he had disability as a result of that injury. Respondent 1 (carrier 1) urges affirmance of the hearing officer's decision and requests that Finding of Fact No. 6 be reformed to reflect that the claimant was not unable to obtain employment at preinjury wages as a result of the (date of injury for docket. no. 1), incident. Respondents 2 and 3 (carriers 2 and 3) urge affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

Whether the (date of injury for docket. no. 1), compensable injury included an injury to the claimant's thoracic spine and whether he had disability resulting from that injury were factual questions 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). It was the hearing officer's prerogative to 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 not persuaded by the evidence that the claimant's (date of injury for docket. no. 1), compensable injury caused or worsened his thoracic conditions. Nothing in our review of the record indicates that the hearing officer's extent-of-injury determination relating to the (date of injury for docket. no. 1), compensable injury is 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).

Carrier 1 seeks an amendment of Finding of Fact No. 6, which states: "[d]ue to the claimed injuries, the [c]laimant was unable to obtain or retain employment at wages equivalent to the [c]laimant's pre-injury wages beginning on January 22, 2002 and

continuing through the date of this hearing.” Carrier 1 urges that this finding contains a typographical error and requests that the word “not” be inserted before the word “unable.” We interpret Finding of Fact 6 to mean that the hearing officer believed that the claimant’s inability to obtain or maintain employment at the preinjury wage was caused by the claimant’s alleged thoracic injuries, but since the hearing officer found that those injuries were not compensable, she concluded that the claimant did not have disability. We perceive no typographical error in Finding of Fact No. 6. Carrier 1 additionally asserts that in Texas Workers’ Compensation Commission Appeal No. 030798, decided May 19, 2003, the Appeals Panel affirmed a denial of disability relating to the (date of injury for docket. no. 1), compensable injury. However, the request for disability at that point was not related to an alleged thoracic injury and only covered the time period through March 3, 2003. For these reasons, we perceive no error in the hearing officer’s consideration of the disability issue.

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of insurance carrier 3 **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Old Republic Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge