This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1992). On January 2, 1992, (hearing officer) conducted this hearing in (city), Texas, after which he found claimant (appellant herein) was not entitled to Temporary Income Benefits (TIBs) after November 12, 1991, the date of the Benefit Review Conference. Appellant asserts that the great weight of the evidence is against that decision and takes issue with Findings of Fact 4 and 6 and Conclusions of Law 3, 4, and 5 in the hearing officer's Decision and Order.

DECISION

Finding that the evidence is sufficient to support the findings and conclusions of the hearing officer, we affirm them but modify the decision and order to clarify its scope.

There was no dispute as to injury in this proceeding. Appellant, on March 5, 1991, injured her arm while working for (employer). She was reaching to stop a sewing machine when she tripped and got her left hand and arm caught in a sewing machine's rollers. It took several people to free her arm. Her left arm and wrist were bruised and swollen, but no bones were broken. (Dr. H) wrapped the arm, put it in a sling, prescribed physical therapy and medicine, and took her off work without limitation until April 1, 1991. She did return to work on April 1, 1991, but testified that her arm hurt and she went to another physician, (Dr. C). Dr. C saw her on April 4 and April 15. He assigned physical therapy three times a week after noting appellant has "occasional numbness and pain" in her arm and hand and referred to the injury as a strain. On April 15 he released her to return to work on April 16 without limitation after noting no swelling and decreased pain; he indicated no more appointments were necessary. She did not return to work on April 16 but did see Dr. C again on April 19. He decided to evaluate her further, gave her pain medication, and again removed her from work status for two weeks. On May 6 and June 10, Dr. C again saw appellant and on June 13 referred her to (Dr. D), a physical medicine and rehabilitation specialist, for tests. Then, in a referral to (Dr. V) dated August 26, 1991, Dr. C referred to an EMG and bone scan as essentially normal. The last record of Dr. C, dated September 3, 1991, says appellant still complains of pain and marks her date of return to work as "unknown."

On July 15, 1991, appellant saw (Dr. R) for a medical examination at the request of the insurance carrier. He reported that she appeared to be developing a reflex sympathetic dystrophy (RSD) which he characterized as a pain syndrome. He recommended a bone scan and return to work to keep the arm in use. Appellant states that Dr. R's report was provided to Dr. C, but Dr. C did not return her to work.

Dr. V first saw appellant on referral from Dr. C on September 16, 1991. In his referral letter to Dr. V, Dr. C did not refer to Dr. R's evaluation. Dr. V also saw appellant in October and twice in December. Dr. V initially found a left arm "traumatic neuropathy" with "possible early RSD involved" and said prognosis was good, "will take 9 to 12 months from injury." (injury was (date of injury)). His records are sketchy, but in December he dropped RSD as a possible problem and added "carpel tunnel syndrome mild" as one. He also writes that appellant needed injection of ETS but could not give it because of her pregnancy.

Studies conducted of appellant included:

Electromyography	December 5	"essentially normal"
Bone Scan	August 3	"no definite abnormalities"

Nerve Condition Study	July 13	"normal"
X-ray - Elbow and Wrist	April 4	"no acute changes"

The hearing officer admitted as his own exhibit a copy of the Benefit Review Conference (BRC) Report, dated November 19, 1991, in which the Benefit Review Officer recommended that no temporary income benefits be found due. (The record indicates that TIBs were paid to the date of the BRC).

Appellant takes issue with Findings of Fact 4 and 6, which read:

4.That claimant, since the date of her injury, has seen several doctors and been subjected to a number of tests; however, there is no objective clinical or laboratory finding of an injury to her left wrist and arm that continues to exist after the Benefit Review Conference on November 12, 1991.

6.That the doctors have not prescribed any medication nor placed any restrictions on claimant as to what she may do, and she performs her normal household duties, including caring for a small son.

The tests and even the narrative data of the physicians are consistent with the finding that there was no objective evidence of injury that continued after November 12, 1991. A determination as to objective medical findings can be helpful, and the hearing officer in evaluating a claimant's physical condition was correct in considering all the evidence, including all the medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 91023 (Docket No. HO-00017-91-CC-2) decided October 16, 1991. We note, however, that objective medical findings are not a prerequisite to determining whether this injury, or disability therefrom, continued to exist after the BRC. Houston General Insurance Co. v. Peques, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.) and Director, State Employees Workers Corp. v. Wade, 788 S.W.2d 131 (Tex. App.-Beaumont 1990, writ denied). Nevertheless, Finding of Fact 4 is sufficiently supported by evidence of record. Finding of Fact 6 is attacked by asserting that cortisone shots were prescribed and by calling attention to the fact that a restriction was present since claimant was not released to work. There was no prescription of cortisone by Dr. V, who states, "needs injection of ETS - however can't due to pregnancy." While it may appear to be a technical nicety, Dorland's Illustrated Medical Dictionary, 27th Ed., defines "prescription" as "a written direction for the preparation and administration of a remedy." A prescription may be written on a physician's progress note, as was before us, but what was written was not a prescription. It can be compared to an entry that states, "would like to give penicillin but the patient is allergic to it." Dr. V's note does reflect that his diagnosis could warrant administration of medicine if the patient's condition did not prohibit it. The hearing officer's reference to, "nor placed any restrictions on claimant as to what she may do," in Finding of Fact 6, should be read along with Finding of Fact 5, which reads partially as follows:

"5.That claimant has not been released to return to work by her doctor because of her continued complaints of . . ."

Finding of Fact 5 shows that the hearing officer knew appellant was not released to work so that his use of the word "restrictions" in Finding of Fact 6 was not meant to be in the context

of work. The remainder of that finding shows the context of "restrictions" as applying to non-employment activities. We also note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5) in discussing *bona fide* offers of employment uses the word "limitations" in referring to an employee's status in regard to work. Finding of Fact 6 is sufficiently supported by evidence of record.

Conclusions of Law 3, 4, and 5 are sufficiently supported by findings of fact and evidence of record. They read as follows:

3.That claimant has not proven by a preponderance of the evidence that she has a disability that extends past the date of the Benefit Review Conference on November 12, 1991.

4.That the claimant has not proven by a preponderance of the evidence that temporary income benefits are due following the Benefit Review Conference of November 12, 1991.

5.That the claimant is not entitled to temporary income benefits after the date of November 12, 1991.

Conclusion of Law 3 is supported by the report of Dr. R, which said that appellant should go back to work. The hearing officer could weigh that report against any other evidence; he is the sole judge of weight and credibility. Article 8308-6.34(e) of the 1989 Act. *See also* Appeal No. 91023, *supra*. In addition, Dr. H and Dr. C had returned appellant to full work status in the past; Dr. V apparently anticipated that recovery would take 9 to 12 months and the BRC occurred at the eight-month point; and the hearing officer also found no objective indication of injury continuing past November 12, 1991. We can imply from this conclusion that the hearing officer found appellant was physically capable of returning to work on November 12, 1991. Burnett v. Motyka, 610 S.W.2d 735 (Tex. 1980). That finding, however, is not the only necessity for a determination that disability no longer exists. Under the guidelines of Texas Workers' Compensation Commission Appeal No. 91045 (Docket No. AU-00055-91-CC-1) decided November 21, 1991, if an employee cannot obtain and retain employment because of the compensable injury, disability continues even though there has been a sufficient release to return to work. *See* Article 8308-1.03(16) for the definition of disability. In a situation such as before us in which the appellant is no longer employed by the preinjury employer, this conclusion correctly states that the appellant has the burden to show disability continues. At the time of the contested case hearing there was sufficient evidence of record to support this conclusion, but such does not preclude appellant from attempting to show disability during a future period.

Conclusion of Law 4 is next attacked as incorrect because disability continued. We agree that the question of entitlement to TIBs is dependent on whether disability exists but point out that Conclusion of Law 3 has determined that disability did not exist past November 12. This panel has found herein sufficient findings and evidence to support that conclusion as of the date of the contested case hearing.

Conclusion of Law 5 merely restates Conclusion of Law 4 and applies the law to it; it is sufficiently supported by evidence, findings and the 1989 Act. We do not substitute our judgment for that of the trier of fact when a challenged finding is supported by some evidence of probative value, and it is not against the great weight and preponderance of the evidence. TEIA v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

We modify the decision and order of the hearing officer to read as follows:

That the claimant, (claimant), is not entitled to receive temporary income benefits under the Texas Workers' Compensation Act from the carrier, Charter Oak Fire Insurance, after the date of the Benefit Review Conference on November 12, 1991, unless disability recurs.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip F. O'Neill
Appeals Judge