APPEAL NO. 93713

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. Section 401.001 *et seq.* (1989 Act). Begun on June 29, 1993, and closed on July 29, 1993, a contested case hearing was held in (city), Texas, with (hearing officer), presiding as the hearing officer. The hearing officer determined that appellant (claimant) did not establish that he suffered disability because of his contact dermatitis. The claimant appeals arguing that the hearing officer erred in his decision that he did not have disability. The carrier responds that the hearing officer's decision was correct.

DECISION

Determining that sufficient evidence exists in the record to support the hearing officer's decision and that the hearing officer did not abuse his discretion, we affirm.
The claimant worked as a custodian for the (employer). His job duties involved janitorial work and he used a variety of cleaning materials and cleansers. The claimant testified that on (date of injury), at about 2:00 a.m. he went to the emergency room at the hospital because the rash on his hands caused his skin to crack and bleed. The emergency room doctor, (Dr. Z), diagnosed the claimant's skin rash as acute contact dermatitis and recommended the claimant see a dermatologist. Dr. Z noted that the claimant was to remain temporarily off work until released by a dermatologist.

Later that same day of (date of injury), the claimant was examined by a dermatologist, (Dr. C). Dr. C had previously examined the claimant on April 28, 1989, as indicated by her medical records of the claimant. On (date of injury), Dr. C diagnosed the claimant with hand eczema. She noted that the claimant said his last skin problem of eczema from 1989 had cleared up "sort of," but not completely 100%. Dr. C prescribed that the claimant wear gloves with cotton liners which will keep the gloves from irritating his hands. Dr. C did not instruct the claimant to remain off of work or to refrain from working with chemicals. The claimant testified that his skin rash continued to come and to go over the two years following his injury.

(Mr. H), the claimant's supervisor at the time of his injury, testified that on February 14, 1991, the claimant said he had a good job lined up and was going to resign. Mr. H stated that he instructed the claimant to use up his remaining sick leave. Mr H., the employers' representative, appeared at times to offer some contradicting testimony on the particular details surrounding notice of the claimant's rash and concerning the claimant's resignation from work for the employer.

Dr. C noted that the claimant called her on February 18, 1991, and the claimant stated that his hands were looking and feeling a lot better. From her first through her last medical entry in evidence in her records of the claimant, Dr. C had noted the hand eczema of the claimant had gotten better and worse at different times. The claimant signed a letter of resignation dated February 18, 1991, and to be effective on February 21, 1991. While the reason for termination may be a factor to evaluate, the focus of the inquiry as to disability is on the claimant's inability to obtain and retain employment at wages equivalent to the

preinjury wage. Texas Workers' Compensation Commission Appeal No. 92200, decided July 2, 1992. The claimant stated that since (date of injury), the rash on his hands had come and gone over the next couple of years up through the hearing. No medical evidence was introduced instructing the claimant not to work except for the temporary instructions from Dr. Z at the emergency room. Dr. C, the dermatologist, did not once indicate that the claimant should not work or could not work in her medical notes concerning the claimant. In determining disability, a hearing officer can consider the circumstances of a claimant's work subsequent to the date of injury. Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992. After the date of injury, working part-time jobs would not preclude a finding that disability has continued. Texas Workers' Compensation Commission Appeal No. 92432, decided October 2, 1992. The claimant worked a number of different jobs over the next couple of years prior to the close of the hearing. As of the hearing date, the claimant was working about 26 hours during the week as a sales clerk and up to eight hours on Sunday as a radio station technician.

The fact of an injury was not in issue; however, we note the medical evidence and the claimant's testimony support the claimant's assertion that he suffered an injury in the course and scope of his employment. However, the claimant's testimony and the medical evidence did not establish that the claimant suffered disability from (date of injury), through July 29, 1993. Accordingly, the hearing officer found that the claimant did not suffer disability. Sufficient evidence supports this finding.

Disability is defined in the 1989 Act under Section 401.011(16): "`Disability' means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The evidence from the claimant's own testimony shows that the injury did not prevent the claimant from working except for the short time on (date of injury), when the claimant went to the hospital emergency room and later that same day to a dermatologist. The claimant testified that this rash did not keep him from working either his former job duties or other job duties, but that he would have to wear cotton liners with rubber gloves when doing work with certain chemicals. The claimant testified that the employer would not let the claimant work his custodial duties any longer but offered him a position answering telephones for a lower pay. While the issue of disability may be established by the claimant alone (Reina v. General Accident Fire & Life Assurance Corporation, Ltd., 611 S.W.2d 415, 417 (Tex. 1981); *citing* Insurance Company of Texas v. Anderson, 272 S.W.2d 772 (Tex. Civ. App.-Waco 1954, writ ref'd n.r.e)), the claimant, in the present case, testified that the rash did not prevent him from doing his custodial job or from finding any other jobs. The claimant did state that one prospective employer did tell him that the visible rash on his hands was a factor in not offering him a job. The claimant latter testified that his hands had been a factor in hiring decisions by his other prospective employers, but this contradicted his earlier testimony.

An injured person may go in and out of disability. Texas Workers' Compensation Commission Appeal No. 93707, decided September 16, 1993. And, while the claimant testified that he had worked about eight different jobs after his injury, he stated that his hand rash had nothing to do with his termination or resignation from any of those jobs. The

medical record shows Dr. C did not restrict the claimant's return to work but only required him to wear protective gloves with cotton liners. Dr. C stated in her medical notes of (date of injury), that the claimant can return to his regular work duties while wearing protective gloves. The claimant's evidence did not establish that his injury prevented him from working as a custodian. The claimant must show a causal connection between his diminished wages and the compensable injury. Texas Workers' Compensation Commission Appeal No. 92078, decided April 2, 1992. And, a person may be found to have a compensable injury, but no disability. Texas Workers' Compensation Commission Appeal No. 92078, decided April 2,1992. The claimant has not met his burden of establishing disability.

Under the 1989 Act, the hearing officer is the trier of fact at the contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Section 410.165(a). The trier of fact can believe all or part or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign their testimony, and then resolves the conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993; Texas Workers' Compensation Commission Appeals No. 93155, decided April 14, 1993. As the fact finder, the hearing officer has the responsibility and the authority to resolve conflicts and inconsistencies in the evidence, to assess the testimony of the witnesses, and to make findings of fact. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993; *citing* Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Where sufficient evidence supports a fact finder's conclusions and his findings are not against the overwhelming weight of the evidence as to be clearly wrong and unjust, then the decision should not be disturbed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); *citing* Dyson v. Olin Corp., 692 S.W.2d 456, 457 (Tex. 1985); In Re King's Estate, 150 Tex. 662, 664-665, 244 S.W.2d 660-661 (1951). The hearing officer found that the claimant did not suffer a disability from (date of injury), through July 29, 1993. Sufficient evidence supports this finding.

Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge