APPEAL NO. 93803

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. art 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on August 18, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) had disability from a compensable injury from (date of injury), (the date of injury) until (date), and that disability ended on (date). The issue of disability was the only issue remaining at the hearing following stipulations by the parties. The claimant appeals the hearing officer's disability determination and urges that the evidence presented shows that disability continued from the date of injury to the present time. Respondent (carrier) urges that the claimant produced no credible evidence to show that he was unable to work and that there was sufficient evidence to support the decision of the hearing officer.

DECISION

Finding the state of the evidence to be sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

That the claimant sustained a compensable injury on (date of injury), when he fell from the bed of a pickup truck was not in dispute. After the parties stipulated as to the average weekly wage (AWW) and that maximum medical improvement (MMI) had not been reached pursuant to the opinion of a designated doctor, the hearing proceeded on the issue of disability. The claimant testified that he did not feel he could perform any type of employment because of his back pain and that he had not looked for any employment since his injury (although there was an indication that he did work for several days following the injury). He felt he could not walk, stand, or sit for any prolonged periods and that he could not lift much weight. He is or has been enrolled in several college courses and has been paid temporary income benefits (TIBS) during a portion of the time he has not worked. Although he told the doctors he treated with that he could not work, such was not reflected in the medical reports admitted. Except for a one day work release on the day of the injury from an emergency room, a one week work release from his treating doctor, a chiropractor, which ended on (date), and a work release statement dated "8/17/93" from a doctor the claimant started treating with shortly before the hearing which indicated the claimant was under the doctor's care and is released from work until the next appointment, there is no medical evidence to indicate that the claimant was not able to work. To the contrary, the claimant's original treating doctor, whose diagnosis was "cervical strain complex, cervicobrachial syndrome, lumbar intervertebral disc syndrome w/o myelopathy," indicated that the claimant "can return to full time work status." An entry in a medical report dated September 3, 1992, indicates that the claimant was involved in a rear-end automobile accident in June or July 1992, resulting in some cervical problems.

Based upon this state of the evidence, the hearing officer determined that the claimant has not been unable to obtain or retain employment from (date), because of a compensable injury. *See* Section 401.001(16). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the

evidence. Section 410.165(a). He resolves conflicts and inconsistencies in the testimony and other evidence and makes findings of fact. Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. Here, the credibility of the claimant was a key matter in the determination of this case. We have said that the testimony of the claimant alone may be sufficient to prove disability. However, a claimant's testimony is that of an interested party and only raises an issue of fact for the fact finder and may be believed or disbelieved in whole or in part. *See* Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Where there is sufficient evidence to support the determinations of the fact finding hearing officer, as there is here, and his findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge