

## APPEAL NO. 93982

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). This case returns to us having been remanded for reconsideration based on a correct application of the law to the evidence. In Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993, the majority of this Panel reversed the case and remanded for further consideration of the evidence (and for development of additional evidence if deemed necessary) to ensure that the appellant (claimant) was not required to produce expert medical evidence to prove either the disability she claimed she had after January 1, 1993, or that her current back problems resulted from her undisputed back injury of (date of injury), recognizing, of course, that any medical evidence adduced would be considered along with the rest of the evidence. The hearing officer, (hearing officer), deemed it unnecessary to take further evidence and thus did not hold another hearing. In his new Decision and Order signed on September 3, 1993, the hearing officer, after reconsidering the evidence, again determined that claimant failed to meet her burden of proving she had disability after January 1, 1993, from her compensable back injury of (date of injury), and that her current back problems were causally related to such injury. Claimant's request for review disagrees with the hearing officer's determinations but asserts no new grounds for appeal. The response filed by the respondent (carrier) urges the sufficiency of the evidence to support the decision.

### DECISION

Finding the evidence sufficient to support the hearing officer's findings and conclusions, we affirm.

The evidence was amply discussed in our earlier opinion and need not be further recited. As noted above no new evidence has been taken. The hearing officer in his new Decision and Order dated September 3, 1993, makes clear that in the context of the correct legal standards regarding claimant's burden of proof in this case, he has reconsidered all the evidence adduced at the hearing which he conducted on June 22, 1993. The hearing officer, with sufficient support in the evidence, found among other things that on (date of injury), while lifting a heavy object from a grocery cart, claimant felt a pain in her back, that claimant was off work until March 6, 1991, as a result of the injury, that she returned to work for two weeks, was off work another six weeks, and then was returned to full duty by her treating doctor on May 22, 1991. The hearing officer further found, again with sufficient support in the evidence, that claimant's employment was terminated on June 1, 1991, at which time she commenced another job, that she began chiropractic treatment through her new employer's group health plan but discontinued it in September 1992 as she could not longer afford it, that she did not have medical care after September 1992, that she was terminated for cause on December 31, 1992, and that she thereafter unsuccessfully sought unemployment benefits. The hearing officer went on to find that claimant did not provide medical information or other credible evidence to show she had disability on or after January 1, 1993, that claimant's inability to work after January 1, 1993, was because she was terminated for cause and not because of her compensable injury, and that claimant's evidence failed to establish a causal relationship between her current back problems and

her undisputed back injury of (date of injury).

Section 401.011(16)) defines "disability" as the inability to obtain or retain employment at wages equivalent to the pre-injury wage because of a compensable injury. The evidence sufficiently supports the hearing officer's factual findings as well as his legal conclusions that claimant's current back problems are not causally related to her injury of (date of injury), that she did not have disability after January 1, 1993, and that she is not entitled to temporary income benefits. Section 410.065(a) provides that the hearing officer is the sole judge not only of the materiality and relevance of the evidence but also of its weight and credibility. The hearing officer made clear in his discussion that he found claimant's testimony, as well as that of her witness, wanting in credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, supra), issues of injury and disability may be established by the testimony of a claimant alone. See e.g. Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo, no writ). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

The challenged findings and conclusions of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge