APPEAL NO. 94313

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on January 20, 1994, (hearing officer) presiding as hearing officer. He determined that a medical evaluation report from the appellant's (claimant) treating doctor on September 30, 1992, assigning maximum medical improvement, was not a valid certification and that therefore, the claimant had not reached maximum medical improvement He also determined that the claimant does not have disability from January 18, 1993, to the time of the hearing. The claimant appeals the determination that he does not have disability and cites medical evidence to support his position that he suffered disability, at least at times, during the period in question. Respondent (carrier) urges that there is sufficient evidence to support the hearing officer's determination and asks that the decision be affirmed.

DECISION

Not finding the determinations of the hearing officer to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm.

Since the issue involving the validity of the treating doctor's certification of maximum medical improvement had not been raised on appeal (Section 410.202(a)), we do not address the matter in this decision. However, this is not to necessarily indicate our agreement with the hearing officer's determination that the certification is invalid because of some flaw in the completion of the form. *See generally* Texas Workers' Compensation Commission Appeal No. 93489, decided July 29, 1993.

The claimant worked for a sugar beet company as a piler operator on (date of injury), the date of his injury. The claimant testified that while performing his duties he was injured in various part of his body, including his back, when a tire exploded and threw him to the ground. He was taken to a company doctor, (Dr. M), who diagnosed a contusion of the knee and returned him to work the same day. Dr. M subsequently certified that the claimant reached maximum medical improvement on September 30, 1992, with a zero percent impairment rating, the rating determined not to be valid, at least for the purposes of starting the 90-day time period to dispute under Rule 130.5(e) (Tex. W. C. Comm'n, 28 TEX. ADMIN CODE. § 130.5(e)). The claimant continued his regular duties, which were physically demanding, until the end of the beet harvest season in late December 1992. He went to Dr. M on January 11, 1993, with complaints of lumbar strain, was prescribed medication and offered physical therapy. On January 18th, the claimant went to a chiropractor, (Dr. A), who treated him until March 8, 1993, when he released the claimant from his care. Claimant saw (Dr. B) in April and May 1993 and underwent lumbar spine x-rays and an MRI exam. Dr. B concluded that claimant's back was within normal limits with no evidence of herniation or stenosis and advised the claimant he could return to full duty. Claimant returned to his normal seasonal job with the employer at the beginning of the 1993 season on September 14, 1993. According to his testimony, he worked until around October 19, 1993, when he quit because "it was very cold, raining, and I had pain." He stated that he went to Dr. A who said that he was "swollen in the back." Dr. A took the claimant off work

and released him to work on November 15, 1993, and indicated that the claimant reached "chiropractic MMI" on November 19, 1993. The claimant did not return to work or contact the employer, and pursuant to the union contract, was terminated after three days. The claimant testified that he had not looked for any work since January 1993, other than returning to the employer in September 1993, that he normally did not work during the summer but that he did normally work other jobs when not working for the employer. He also stated that he worked following the incident of (date of injury), although he had difficulty working. At one point he testified that he could not work since the accident and at another point testified that "they won't give me work anywhere" and that he could go back to the work that he "was doing before."

Based on this state of the evidence, the hearing officer found that the claimant's failure to obtain or retain employment from January 18, 1993, to the date of the hearing was not because of his compensable injury of (date of injury). The claimant had the burden to establish that he had disability for any period claimed. Texas Workers' Compensation Commission Appeal No. 91022, decided October 3, 1991. The hearing officer apparently did not find the claimant's testimony on this issue to be particularly credible and was not convinced from the total of the medical evidence that any off-duty period from January 18, 1993, was a result of the incident of (date of injury). As provided in Section 410.165(a), 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. He can believe all, part, or none of the testimony of a given witness (McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)) including that of the claimant. Bullard v. Universal Underwriter's Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Where there are conflicts or inconsistencies in the evidence and testimony, the hearing officer resolves those matters and determines the facts in the case. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Given the circumstances that the claimant was immediately returned to work following the incident, that he continued working until the normal end of the season, that his testimony was somewhat inconsistent and was in conflict with other evidence, that the totality of the medical evidence was not compelling or sufficiently convincing in connecting the claimant's intermittent complaints to the incident on (date of injury), and that there were findings of maximum medical improvement as early as September 30, 1992, we can not say that there was insufficient evidence to support the hearing officer. Conversely, we can and do conclude that his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judges