APPEAL NO. 950054
FILED FEBRUARY 17, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 1994, a contested case hearing was held to consider the single issue of whether appellant (claimant) had disability as a result of her _____, compensable injury from February 16, 1994, through the date of the hearing. The hearing officer determined that claimant did not carry her burden of proving that she had disability within the meaning of the 1989 Act. Claimant's appeal essentially challenges the sufficiency of the evidence to support that determination. Respondent (carrier) urges affirmance, arguing the sufficiency of the evidence in support of the hearing officer's decision and order.

DECISION

We affirm.

In a prior hearing, which is the subject of our unpublished decision in Texas Workers' Compensation Commission Appeal No. 94306, decided April 26, 1994, we affirmed the hearing officer's determination that claimant sustained a compensable injury on _____, and that she had disability from that date through the date of the hearing, February 16, 1994. The hearing, which is the subject of this appeal, addressed the issue of whether claimant's disability continued thereafter.

Claimant testified that she continues to receive treatment for her lumbar strain injury with her family doctor, Dr. L. She stated that she was returned to light duty by Dr. H, the orthopedic surgeon to whom she was referred after the injury, on January 11, 1994, with a lifting restriction of ten pounds. Dr. H certified that claimant reached maximum medical improvement on March 8, 1994, with an impairment rating of zero percent.

Claimant testified that after she received her light duty release, she began working at Outreach Home Healthcare. She stated that she was paid $4.25 per hour and that at the time of the hearing she was working seven and one-half hours per week. She stated that from April to June 1994, she had also worked at Caprock, Inc. and between that job and her job at Outreach she worked approximately 21 hours at $4.25 per hour, but thereafter she began losing clients and she worked fewer hours as a consequence. Claimant stated that because of her injury, she continues to be unable to vacuum, dance and race her stock car. She stated that she cooks, does minor cleaning and does the exercises recommended by her physical therapist. In addition, she testified that she can only stand for about 45 minutes to an hour, walk for about 10 to 15 minutes at a time and drive for about an hour at a time. Nonetheless, claimant admitted that when she went on a vacation in July 1994, she rode in the car for 24 hours straight, with only short rest stops every couple of hours.

Carrier submitted a surveillance videotape of June 4, 1994, which purports to show claimant racing her stock car. Mr. H who shot the videotape testified that he had no doubt that the person racing the car in the video tape was claimant. Claimant insisted that she did not race the car on June 4, 1994, and further that she did not participate in any race in the 1994 racing season. Claimant acknowledged that she drove the race car in the pits on June 4th to put water in the radiator, emphasizing that she did not race the car. Claimant also admitted that the doors to the stock car were welded shut and therefore, she had to climb in through the window. Carrier also introduced the sports page from the local newspaper in evidence. It gave the results of a race on May 28, 1994, stating that the claimant won the feature race and was second in her heat race, although claimant maintained that Mr. S was driving her car that night and that he continued to drive it through the balance of the 1994 season (through September 1994). Finally, carrier submitted a letter from Dr. L, claimant's treating doctor, dated August 9, 1994, which provides:

> The result of an MRI scan [of claimant's lumbar spine dated July 18, 1994] shows an essentially normal lumbar spine. [Carrier's adjustor] has informed me that [claimant] is driving her race car on a regular basis. To get in to this race car she has to climb in through a window, which would be quite difficult with even moderate low back pain. This certainly casts some doubt on the intensity of her complaint of low back pain.

Several other witnesses, primarily fellow race drivers, testified at the hearing; they either testified that they did not know whether claimant had driven in the 1994 race season or that she had not. Mr. S testified that he had driven claimant's stock car on and off through the 1994 season and that he raced the car on May 28th, when it won the feature and that he was racing the car on June 4th, the evening depicted in the surveillance video tape. Finally, he testified that claimant never raced the stock car in 1994.

Under the 1989 Act, the claimant has the burden of proving that she had disability as a result of her compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Whether claimant had disability is a fact question to be resolved by the hearing officer. The hearing officer is the sole judge of the weight, credibility, relevance and materiality to be given to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts in that evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of any witness and could properly decide what weight he would assign to the other evidence before him. Campos, *supra*. As an appellate body, we will not substitute our judgment for that of the hearing officer where her

determinations are supported by sufficient evidence. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In this instance, the hearing officer determined that the claimant did not have disability from February 16, 1994, through the date of the hearing. In so doing, the hearing officer chose not to credit the claimant's testimony that she could not find employment at her preinjury wage because of the continuing effects of her compensable injury. In Texas Workers' Compensation Commission Appeal No. 931002, decided December 13, 1993, we noted that expert medical evidence is not generally required to prove injury and disability. Rather, we stated that in most instances issues of injury and disability may be established by the testimony of the claimant alone, if believed. However, in this case, the hearing officer obviously did not believe claimant's testimony and also determined that her activities at the race track on June 4th were wholly inconsistent with an assertion of disability. Our review of the record indicates that the hearing officer's disability determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, there is no basis for reversing the decision and order on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finally, we note that claimant attached a medical report to her appeal. It is well settled that the Appeals Panel is limited to reviewing the record developed at the hearing. Section 410.203. Thus, that document was not considered in making this decision.

The decision and order of the hearing officer are affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst

Appeals Judge