

APPEAL NO. 980070

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 22, 1997, with the record closing on December 8, 1997. With regard to the issues at the CCH, she (hearing officer) determined that the appellant (claimant) sustained a compensable injury on _____, and did not have disability. The claimant appeals the disability determination, seeks a reversal of the decision and argues he was disabled from May 22 to October 8, 1997. The respondent (carrier) responds and seeks an affirmance of the decision. Neither party appeals the compensability determination and, therefore, it became final by operation of law. Section 410.169.

DECISION

We affirm.

The claimant testified at the CCH that on _____, he was welding an electrical box when the box exploded and threw him against the back of the "hutch" he was working in. He claimed that the force of the explosion caused headaches, blurred vision, ringing in the ears and memory loss. He left work after the explosion, worked one-half an hour on _____, and left due to a headache, worked all day May 1, 1997, did not work the weekend of May 2 and May 3, 1997, and worked all day from May 4 to May 8, 1997. (employer) laid him off on May 9, 1997, due to a reduction in its workforce. He said the headaches, blurred vision and memory loss caused him to be unable to obtain and retain employment at his preinjury wages from May 22 to October 8, 1997.

The claimant saw (Dr. CR) on May 5, 1997. A computerized tomography (CT) scan of his brain was normal and Dr. CR released him to return to regular duty work on May 7, 1997. Dr. CR referred him to a neurologist and on May 22, 1997, the neurologist, Dr. (Dr. E), noted complaints of headaches and "tinnitus in both ears, blurred vision and memory problems." On June 18, 1997, a neuropsychologist, (Dr. CO), noted the claimant's psychiatric history for the two years prior to the compensable injury, including the discovery of a dead body and a suicide attempt. Dr. CO opined that the "neuropsychological evaluation is not conclusive regarding the presence of mild brain dysfunction due to the concurrent depression and symptoms of post traumatic stress disorder [PTSD]." On June 19, 1997, an ophthalmologist, (Dr. L), found "no evidence for any ocular or neuro-ophthalmologic deficit." Dr. E certified that the claimant was off work due to the compensable injury from May 22 to August 13, 1997. On November 5, 1997, a psychiatrist he had seen since July 23, 1997, (Dr. G), opined that the claimant's "history is consistent with an industrial accident and residual symptoms that are a direct result of that occurrence." On October 8, 1997, a carrier-selected required medical examination doctor, (Dr. B), stated that the claimant "did not present any symptoms of Depressive Disorder or

[PTSD]," and that "his anxiety is related to this evaluation and pending financial situation."

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The hearing officer herein found that the compensable injury "has not prevented Claimant from obtaining and retaining employment. . . ." The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. Section 410.165(a). The doctors had differing opinions as to the nature of the claimant's psychological and mental injuries, if any, and as to whether he was unable to work because of his compensable injury.

The claimant maintains Dr. E's opinion, that he was unable to work because of the compensable injury, is uncontradicted. He argues that the hearing officer erred in not accepting Dr. E's opinion and finding consistent with it. However, the hearing officer is the arbiter of the weight and credibility of the evidence and may choose to believe or disbelieve a doctor's opinion. *Id.* While there was evidence that the claimant was unable to work because of the compensable injury and evidence that he was unable to work for other reasons, it was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). She is able to weigh the evidence and determine whether the claimant was unable to work because of the compensable injury or because of something else. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We conclude that the disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge