

APPEAL NO. 980170  
FILED MARCH 11, 1998

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 November 24, 1997, with the record closing on December 29, 1997. With regard to the issues at the CCH, the (hearing officer) determined that the respondent's (claimant) "current low back problems are a result of her \_\_\_\_\_ injury," and that she had disability from July 21 to November 24, 1997. The appellant (carrier) appeals, seeks a reversal of the decision and argues that the claimant's \_\_\_\_\_, compensable injury resolved and that she did not have disability. The claimant responds and seeks an affirmance of the decision.

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt his rendition of the facts. We discuss only those facts necessary to our decision. The parties stipulated that the claimant sustained a compensable low back injury on \_\_\_\_\_. Her initial choice of treating doctor, (Dr. W), examined her on \_\_\_\_\_, diagnosed a lumbar sprain and released her to return to regular-duty work. It is undisputed that she returned to work for (employer) until she was terminated on September 12, 1996. On July 21, 1997, her treating doctor, (Dr. G), noted back spasms and advised her not to work. A July 24, 1997, magnetic resonance imaging test revealed a protruding disc at the L5-S1 level of her back. On August 26, 1997, Dr. G stated that the claimant had not sustained a new injury and that his treatment of her was related to her \_\_\_\_\_, injury. The carrier's adjuster, (Ms. A), stated in an (date), Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) that the claimant contacted Ms. A the day before, reporting that she had injured herself at home.

In the case under review, the extent of the injury was not in dispute but the effect the injury had on her condition was in dispute. Therefore, the "current condition" issue related to whether she had disability. 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 claimant argued at the CCH that her inability to obtain and retain employment was because of her compensable injury, while the carrier argued it was because of a subsequent injury at her home. The claimant denied sustaining an injury at home. The carrier argues on appeal that it is unreasonable for an employee to sustain an injury at work, work four weeks, be terminated, draw unemployment and claim she is disabled 11 months after the injury. We disagree. While the duration of an employee's temporary income benefits is limited based on the date of the injury and the date disability begins, there is no time period after which an employee may not allege she had disability.

The determination as to an employee's disability is a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. When an employee sustains a compensable injury and then is terminated by the employer, we must consider whether her termination was for cause. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. If the termination was for cause, the employee must reestablish her disability after the termination by credible evidence (*i.e.*, was there a continuing effect of the injury on the ability to obtain work). *Id.* There is no dispute that the claimant was terminated for cause. The claimant did not allege she had disability any time prior to July 21, 1997. Dr. G's reports support the hearing officer's determination that she was unable to obtain and retain employment at wages equivalent to her preinjury wages after that date, because of her compensable injury.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). 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). 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 determinations are not so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust.

The decision is not against the great weight and preponderance of the evidence and, therefore, we affirm.

Christopher L. Rhodes  
Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Philip F. O'Neill  
Appeals Judge