APPEAL NO. 980259
FILED MARCH 25, 1998

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 27, 1998, a contested case hearing was held in (City), Texas, with (hearing officer) presiding as hearing officer. The issues were whether the appellant, who is the claimant, injured his back and right knee at the same time that he sustained an ankle injury on _____, and whether he had disability from his compensable injury for the period from February 8 through July 17, 1997.

The hearing officer held that the claimant had not injured his back and knee when he injured his ankle. He also held that claimant did not have the inability to obtain and retain employment at his preinjury wage after February 8, 1997.

The claimant has appealed the determination that he did not have disability, pointing to doctor's slips which took him off work entirely for the period of time in question, due to his undisputed ankle injury. The claimant argued that the hearing officer's decision was against the great weight and preponderance of the evidence. The carrier, who is the respondent, responds that claimant failed to meet his burden to prove an inability to obtain work, as work ready to meet his restrictions was made available by the employer. The findings on extent of injury have not been appealed.

DECISION

Affirmed.

The claimant worked as a dishwasher for (employer). He sustained an undisputed injury to his right ankle on _____, when he slipped and fell while hoisting a garbage can over a dumpster. He was almost 21 years old when the accident occurred. Claimant first saw Dr. R on November 19, and was released back to light-duty work for six hours a day, for 14 days. His diagnosis was sprained ankle. Claimant's manager, Mr. R, testified that the claimant was stationed at the cutting board for six hours a day. On December 3, 1996, Dr. R noted that claimant had medium swelling in his ankle. On January 21, 1997, Dr. R noted that claimant was released to work with restrictions only that he not stand for more than four hours and that he wear his splint. There is no limitation in this form in the area indicating the total hours per day. Although a bone scan was scheduled for him in early February 1997, the claimant did not attend, either because he did not have the address or because he did not have all the "papers" (unspecified) that were needed. The testimony is not entirely clear on this point. On May 8, 1997, a consulting doctor, Dr. GR, noted some bilateral swelling in the feet and limited right ankle range of motion, and he diagnosed right ankle arthralgia.

In early February 1997, claimant changed doctors to Dr. G, D.C., whose intake form indicated that claimant's chief complaint was his low back, knee, and ankle, in that order. A "disability certificate" filled out by Dr. G on July 18, 1997, states that the claimant has been unable to work from February 28 through August 18, 1997, because of his ankle injury. Mr. R stated that claimant left the employer around February 7th when he was reduced to four hours a day light-duty work by his doctor. There was no testimony about what claimant was paid. Although claimant stated that he had not returned to work and that his doctors had put him on light duty, he did not testify as to his inability to perform any gainful employment.

A claimant's testimony alone is sufficient to establish that an injury has cause disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). However, there must be such testimony in the record for a favorable decision to be based on. Even then, a trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). He may have found it incredible that a youthful claimant would be completely unable to work due to an ankle injury. Furthermore, he could consider that Dr. R had released claimant back to work in January with only a four-hour standing limitation, with his total hours not limited as they had been right after the injury.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge