APPEAL NO. 990069

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 4, 1998. He determined that the appellant (claimant) had disability as a result of his compensable injury of _____, only from August 3, 1998, to August 4, 1998. The claimant appeals this determination, contending that it is contrary to the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a pressroom manager for a local newspaper. He testified that on Friday, _____, he sustained a compensable low back injury as a result of lifting a roll of newsprint. He said he reported it the following Monday to Mr. C, a subordinate, and later that week to Mr. W, his supervisor. According to the claimant, Mr. W arranged an appointment with Dr. J for July 22, 1998. Dr. J's Initial Medical Report (TWCC-61) for this visit does not reflect a diagnosis, but the claimant said the diagnosis, a pulled muscle, was made without benefit of any diagnostic testing. Dr. J placed the claimant in a light-duty status for two weeks. The claimant did not lose any time from work until August 3, 1998, when he was terminated. He said he was able to continue working because Mr. C did most of the heavy work.

After his termination, the claimant changed treating doctors to Dr. K, D.C. His diagnoses were paraspinal myospasms and segmental dysfunction. He placed the claimant in an off-work status effective August 11, 1998. An MRI of September 3, 1998, was read as showing herniation at L4-5 and bulging at two other levels. On September 30, 1998, Dr. F examined the claimant and reviewed the MRI. His diagnosis was low back spasm secondary to myofascial strain. In his opinion, the MRI disclosed minimal bulges at L4-5 and L5-S1 "with very, very mild degeneration." The claimant started a work hardening program on November 1, 1998. He contended that he was unable to work since his termination because of his injury other than occasionally as a "sound man" for a local band. He admitted that he sought, but was denied, unemployment compensation.

Mr. M, the claimant's cousin, testified that, though not an employee of the employer, he helped the claimant lift the roll of newsprint when the claimant said his back "popped." Mr. W testified that he was first notified of this injury on July 21, 1998, when told by the office manager that the claimant wanted a doctor's appointment. According to Mr. W, the claimant said he was not sure when he hurt himself and that there were no witnesses. He did not notice that the claimant had any problems working up to the time of termination and said that the claimant's normal job was light duty anyway because Mr. C did what heavy

work there was. He said that the claimant had a prior history of problems, including unexcused absences, for which he was terminated.

Mr. C testified that he saw the claimant and his cousin pick up the paper roll, but heard no complaints or groans and that the claimant did not look hurt. He said that the claimant did not do heavy work, was "just lazy," and never complained to him of pain from the date of the injury to August 3, 1998.

It was not disputed that the claimant sustained a compensable injury on _____. Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Whether a claimant has disability for any period claimed is a question of fact for the hearing officer to decide and can be proved by the testimony of the claimant alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the claimant earned his preinjury wage from the date of injury up to his termination on August 3, 1998, and for this reason could not have disability during this period. Critical to the question of disability after this date is why the claimant no longer worked after his termination. The hearing officer found disability on August 3 and 4, 1998, even though he was terminated on August 3, 1998, because these were the last two days of Dr. J's light-duty release. At this point, presumably, the hearing officer concluded that the claimant could return to work earning his preinjury wage. After this date, he found that the claimant's inability to work "if at all . . . does not result from the compensable injury of _____." Finding of Fact No. 18. The claimant, in his appeal, argues that the hearing officer improperly allowed the fact of termination to end disability. As the claimant points out, we have stated that termination in itself does not necessarily end disability, but is a factor for the hearing officer to consider on the disability issue. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991.

We cannot agree that the hearing officer impermissibly considered the termination as ending disability as a matter of law. Nowhere does he so state in the decision and order. Rather, he simply finds that after August 4, 1998, his work restrictions ended and any inability to work, that is, earn preinjury wages, was not caused by the injury. Clearly, there was other medical evidence placing the claimant in an off-work status after his termination and conflicting evidence about the nature of the compensable injury. The hearing officer, as fact finder, was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In the face of evidence challenging the claimant's credibility, the hearing officer was not persuaded by the claimant's testimony or Dr. K's opinion that he could not return to earning his preinjury wage because of the compensable injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer, but find the evidence sufficient to support the finding of two days of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Tommy W. Lueders
Appeals Judge