

APPEAL NO. 990070

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 8, 1998, a contested case hearing (CCH) was held. The issue at the CCH was whether the respondent (claimant) had disability after July 30, 1998. The hearing officer determined this issue in claimant's favor. Appellant (carrier) appealed on factual sufficiency grounds, noting that claimant had been terminated from his job for cause on July 30, 1998. Claimant replied that the hearing officer's determination is supported by the record.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant had disability after July 30, 1998. Carrier asserts that, because claimant was terminated for cause on that date after a positive drug screen, claimant's disability ended on July 30, 1998.

Claimant testified that he is a gas compressor mechanic. He said he sustained a compensable injury on _____, and that he was diagnosed with a hernia. Claimant testified that he underwent surgery for his hernia on June 25, 1998, and that he later returned to light-duty work. He said his doctor told him that he may slowly increase the amount of weight he can lift at work over time. Claimant testified that he cannot do his former job because of continuing problems. Claimant said he was terminated July 30, 1998, after a positive drug test. Claimant said he has not worked since that time and that he still has groin pain. Claimant testified that he is also being evaluated regarding a back injury.

A work status slip signed by Dr. D on July 7, 1998, states that claimant is on light-duty status with no lifting over 10 pounds. A work status slip signed by Dr. D dated July 27, 1998, states that claimant is on light-duty status and that he may "increase lifting by [10 pounds] per week until seen again in [four] weeks." Work status slips signed by Dr. D dated September 15, 1998, October 5, 1998, and November 30, 1998, stated "no heavy lifting" for work from September 15, to December 11, 1998. A medical record dated September 28, 1998, states that claimant has continuing groin pain.

The parties stipulated that: (1) claimant sustained a compensable injury on _____; (2) claimant had disability from _____, to July 20, 1998; and (3) claimant returned to work on July 21, 1998, and worked until July 30, 1998. The hearing officer determined that: (1) claimant was terminated on July 30, 1998, as a result of a positive drug test; (2) claimant underwent hernia surgery in June 1998 and had a 10 pound lifting restriction at the time of his termination; and (3) claimant had disability from July 30, 1998, to the date of the CCH.

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). A claimant has the burden of proving that he or she has disability. Texas Workers' Compensation Commission

Appeal No. 941566, decided January 4, 1995. The compensable injury need not be the sole cause of the disability. Texas Workers' Compensation Commission Appeal No. 960054, decided February 21, 1996; Texas Workers' Compensation Commission Appeal No. 941012, decided September 14, 1994. A conditional or light-duty release is evidence that disability continues and a claimant under a light-duty release does not have the obligation to look for work or to show that work was not available to him. See Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, 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.

The Appeals Panel has addressed similar fact situations and arguments by carriers in Texas Workers' Compensation Commission Appeal No. 980003, decided February 11, 1998 and Texas Workers' Compensation Commission Appeal No. 961805, decided October 28, 1996. In this case, the hearing officer considered the evidence regarding the reasons why claimant was unable to obtain or retain employment at wages equivalent to his preinjury wage. The hearing officer considered the evidence regarding sole cause and determined this issue in claimant's favor. We have reviewed the hearing officer's disability determination and we conclude that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge