

APPEAL NO. 990206

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 January 5, 1999. He (hearing officer) determined that the appellant (claimant) did not have disability, regarding her compensable back injury, from May 19, 1995, through October 9, 1995. Claimant appeals this determination on sufficiency grounds. Respondent (carrier) responds that claimant's appeal is untimely and also that there is no error in the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that claimant's appeal was untimely. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on January 14, 1999, with a cover letter dated that same date. Claimant's request for review indicates that claimant received the hearing officer's decision and order on January 16, 1999. A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Commission not later than the 20th day after the date of receipt of the decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). In this instance, the appeal was due on Monday, February 1, 1999.<sup>1</sup> Claimant's request for review was sent by mail to the Appeals Panel on January 28, 1999, and was received on February 1, 1999. Therefore, the appeal is timely.

Claimant first contends the hearing officer erred in determining that she did not have disability due to her compensable back injury of \_\_\_\_\_.<sup>2</sup> She contends that she still has pain and needs treatment, that she changed treating doctors to obtain treatment, that she had surgery on her knee, and that she has a disc problem.

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). 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.

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<sup>1</sup>The fifteenth day fell on a Sunday, so the appeal was due the next day.

<sup>2</sup>In her brief, claimant appears to contest an impairment rating (IR) given to her by a designated doctor. We will not address the IR issue because it was not an issue at the CCH.

We note that claimant's knee injury occurred on a different date and is not a part of this claim. Regarding the back injury the subject of this claim, claimant testified that she slipped on ice at work and fell in a sitting position, hurting her back. She said she treated with the company doctor and with Dr. A, but that they did not help her, so she changed treating doctors to Dr. B in May 1995. She said her employment was terminated on May 16, 1995, and that her employer claimed she had insulted another employee. Claimant said she changed treating doctors to Dr. B because the other doctors did not treat her pain and she denied that she looked for a new doctor because her employment was terminated.

The hearing officer determined that claimant was able to earn her preinjury wage during the period in question and that she did not have disability. In the decision and order, the hearing officer stated that claimant's sudden rush of applications to change treating doctors leads one to the conclusion "that the claimant was 'shopping' for a doctor who would . . . take her off work, especially since the employer was taking disciplinary action and terminating her employment."

There was conflicting evidence regarding whether claimant had disability. In a medical report, Dr. B opined that claimant had disability from May 19, 1995, to October 9, 1995. However, there was evidence from Dr. A dated in 1995 that, as of May 8, 1995, claimant was working regular duty, had minimal tenderness across the back, and that she did not have disability. The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant had disability for the claimed period, and resolved this issue against claimant. We will not substitute our judgment for his in this regard because the disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra*. Given our standard of review we will not overturn the hearing officer's decision. *Id.*

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Alan C. Ernst  
Appeals Judge