APPEAL NO. 990249

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 January 20, 1999. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury, with a date of injury of _____, and that she had disability as a result of her compensable injury from June 24 to August 2, 1998. In its appeal, the appellant (self-insured) challenges those determinations as being against the great weight and preponderance of the evidence. The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained compensable back injuries in October 1997, October 1994, June 1994, and May 1994. The claimant testified that on _____, she was working as a hinge sealer at the self-insured's truck assembly plant. She stated that she had worked for the self-insured for almost 14 years at that time but that she had only been working as a hinge sealer for about a month. She testified that as a hinge sealer, she was required to pick up garnish moldings from the floor and put them on vehicles going down the line. She stated that the parts were not on a rack and separated by color; that, as such, it was more difficult to get the correct molding to put it on the vehicles at the required pace; that she was required to twist and bend to the left to get the moldings; and that the hinge sealer position was also "overloaded" with other job tasks, thus, she had to literally run to get the job done. She testified that she injured her left low back from repetitively having to bend, twist and reach to pick up the moldings. She stated that she believed she had sustained a new injury because the pain was in her left low back and it had not been in that location with her previous back injuries.

The claimant got a pass from her supervisor to go to the company nurse on June 16, 1998. She stated that she delayed in going to the nurse because she had been working with her supervisor to get the job changed and had been assured that changes were going to be made. The notes from the self-insured's plant nurse from the June 16, 1998, visit, state that the claimant complained of left low back pain but that there were "no s/s of injury noted." On cross-examination, the claimant acknowledged that June 16, 1998, was her last day at work prior to a strike-related layoff. On June 24, 1998, the claimant had her first appointment with Dr. S, who has been her treating doctor since 1994. In an Initial Medical Report (TWCC-61) of that date, Dr. S diagnosed thoracic and lumbar strains, noting that the claimant had complaints of left-sided lumbar pain. The claimant testified, and Dr. S's records reflect, that Dr. S prescribed physical therapy three times per week for her injury. She maintained that Dr. S did not take her off work because she had already been laid off as of June 16, 1998. In a "To Whom it May Concern" letter of June 16, 1998, Dr. S stated:

> Although [claimant] had previously injured her back in 1997, it is my opinion that this injury (on _____) is a new work related injury and should be treated as such. [Claimant] had been doing fairly well in regards to her 1997 back injury. She was only seen periodically for the injury. Not to mention, she was on a new job assignment when the injury occurred on _____. [Claimant] had been given an impairment rating of 8% and [an] MMI [maximum medical improvement] date of 1-20-98 for the 1997 back injury. Again, she was doing well with her back until she was injured on the job on _____.

Dr. S concluded his letter by stating that the claimant may need a current MRI for comparison purposes to see if there was additional damage to the spine as a result of the _____, injury. In a second "To Whom it May Concern" letter dated December 9, 1998, Dr. S again opined that the claimant had sustained a new injury on _____, noting that she had been tolerating her work despite her 1997 compensable injury and that she experienced left-sided lumbar pain after her _____, injury, which she had not had previously. Dr. S again recommended that diagnostic testing might be needed for comparison purposes; however, there is no indication that Dr. S ever ordered any such diagnostic testing.

With respect to disability, the claimant testified that she was not physically able to perform her job duties after June 16, 1998. She acknowledged that she returned to work in the hinge sealer position on August 3, 1998, the day the plant reopened after the strike-related layoff. She testified that when the plant reopened, job modifications had been made to the position, which made it easier for her to do the job and that further modifications were made within one to two weeks after she went back to work.

The carrier argues that the hearing officer's injury determination is against the great weight and preponderance of the evidence. That issue presented a question of fact for the hearing officer to resolve. Generally, injury and disability issues can be established on the basis of the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). In arguing that the hearing officer's injury determination is against the great weight and preponderance of the evidence, the self-insured emphasizes that the claimant had sustained a prior lumbar injury for which she had seen Dr. S as late as May 1998. In addition, the self-insured emphasizes the timing of the claimant's claim, noting that she did not allege a new injury or go to the nurse until June 16, 1998, for the alleged _____, injury, the date she was laid off due to the strike at another of the self-insured's plants. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). The self-insured emphasized the same factors at the hearing and it was a matter left to the discretion of the hearing officer to determine the significance, if any, of them. She was persuaded that the claimant's testimony in conjunction with the evidence from Dr. S was sufficient to demonstrate that the claimant sustained a compensable low back injury on _____. The hearing officer was acting within her province as the fact finder in so finding. Our review of the record does not demonstrate that the injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination

on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The self-insured also argues that the hearing officer's disability determination is against the great weight and preponderance of the evidence. It stresses that the claimant did not begin missing time until after her layoff and that her disability claim ended when the plant reopened. Again, the significance of that evidence was a matter left to the discretion of the hearing officer. It is apparent that the hearing officer credited the claimant's testimony that she would not have been able to perform her job duties from June 24, 1998, until August 2, 1998, because of her compensable injury. The hearing officer, as the fact finder, was free to credit that testimony and to discount the timing of the claimant's disability claim. Our review of the record does not demonstrate that the disability determination is so contrary to the great weight and preponderance of the evidence as to compel reversal on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge