

APPEAL NO. 990303

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 8, 1999, a contested case hearing (CCH) was held. With respect to the issues before him, the hearing officer determined that appellant (claimant) sustained a compensable (back) injury on _____ (all dates are 1998) and that claimant had disability beginning on September 16th and continuing through October 27th.

Claimant appeals the disability finding, contending that his disability extended to November 4th rather than the October 27th date found by the hearing officer. Claimant requests that we reverse the hearing officer's decision on this point and render a decision in his favor. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

In that the hearing officer's decision on the injury issue has not been appealed, those findings have become final (Section 410.169) and will not be discussed. Only the facts relating to the disability issue will be reviewed. Claimant was employed as an "airport agent" by an airline and sustained a low back injury lifting a heavy bag on _____. The next day, (day after date of injury), claimant saw Dr. M, who became the treating doctor. In an Initial Medical Report (TWCC-61) dated September 23rd, Dr. M diagnosed lumbar disc syndrome and sciatica. Dr. M took claimant off work and treated him with cold packs, manipulations and therapy. Claimant saw Dr. M 16 times between (day after date of injury) and October 26th. On a "Disability Release Form" dated October 23rd, Dr. M released claimant to return to work on October 27th without any restrictions. Claimant testified that he was unable to work until November 4th, when he did return to full duty without restrictions.

The hearing officer obviously accepted the doctor's report releasing claimant to full duty on October 27th rather than claimant's testimony that he was unable to work until November 4th. In his appeal, claimant states that his "treating physician revised [his] return to work date to 11-2-98 and this was the date documented by [the] employer." There is no documentary evidence of a revised return to work date and this was not argued at 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. While we have held that disability can be established by a claimant's testimony alone, even if there is conflicting evidence, the testimony of claimant, as an interested party, only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Disability is a factual issue for the hearing officer, who is the sole judge of the weight and credibility to be given to the evidence, to

resolve. Section 410.165(a). It was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer could believe all, part or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In this case, the hearing officer heard claimant's testimony that he was unable to return to work until November 4th, but chose to accept Dr. M's disability release form instead.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they 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 do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge