APPEAL NO. 990504

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 February 10, 1999. The issues at the CCH were whether the respondent's (claimant) compensable injury of _____, extended to pneumoni and pneumonitis, and whether the claimant had disability. The hearing officer determined that the claimant's _____, compensable injury does not extend to pneumoni and/or pneumonitis, and that the claimant had disability beginning October 5, 1998, and continuing through December 12, 1998. The appellant (carrier) urges that the hearing officer's determination of disability is not supported by the evidence or is supported by insufficient evidence. The claimant responds that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

DECISION

Affirmed.

Not in issue is the fact that the claimant sustained a compensable injury on _____, when, according to his testimony, some swimming pool chemicals exploded in a workshop and were thrown on him and caused him to inhale fumes. He states he almost passed out and that an ambulance was called and he was taken to an emergency room (ER). The records from the ER indicate the claimant was exposed to chlorine gas, that he was coughing, that he had burning sensations and abdominal pain, and listed the clinical impression of "Toxic Fume Inhalation" and "Hypoxia, resolved." The claimant states that he was released with an appointment to return, that he was "forced" to go to work the next day, and that he was not allowed to go to the followup appointment. He states he continued to work until terminated on September 24, 1998, although his chest and throat were hurting a lot and that he was coughing. He went to see a Dr. K on September 30, 1998, because he was having the same problems, and Dr. K diagnosed pneumoni and pneumonitis, and took the claimant off work. Later notes from Dr. K kept the claimant in an off-work status. The claimant indicated that he was not able to work until he returned to work on December 13, 1998, although he was still coughing at that time.

The carrier called Dr. C, who had done a peer review of the claimant's medical records (did not examine the claimant), and opined that the claimant did not have pneumoni (stated this does not exist). He disagreed with a diagnosis of pneumonitis but rather thought the condition was more likely industrial bronchitis. Dr. C stated that "regarding causation in toxic tort, this gentleman does have signs and symptoms compatible with his causation to the chlorine incident." As indicated, the hearing officer found that the claimant's injury did not extend to pneumoni and pneumonitis and that issue is not on appeal. However, based on the claimant's testimony and the medical records, he found that the claimant had disability from October 5 through December 12, 1998. Although the specific issue regarding whether the compensable injury extended to pneumoni and pneumonitis was resolved in a finding that it was not, and the specific description of the

_____, compensable injury was not set out, the evidence surrounding the compensable injury of _____, shows that the injury included toxic inhalation. This, quite apparently, was the compensable injury that was the basis of the disability found by the hearing officer.

While there was some conflict and inconsistency in the testimony of the claimant and between the medical opinions before the hearing officer, these were matters for his determination. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Section 410.165(a). As has been noted, the testimony of a claimant alone, if believed, may be a sufficient basis to prove disability. Texas Workers' Compensation Commission Appeal No. 93562, decided August 12, 1993. Here, there was testimony that the claimant had disability during the period found by the hearing officer and there was medical evidence in support of the testimony. While there was other evidence and circumstances that could support inferences different from those found most reasonable by the hearing officer, this is not a sound basis to set aside his findings or reverse his decision. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). From our review of the evidence, we are unwilling to hold that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or 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). Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge