

APPEAL NO. 990671

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 February 11, 1999. He determined that the compensable injury of the appellant (claimant) is not a producing cause of the claimant's current low back condition and that claimant did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that the claimant's \_\_\_\_\_, low back injury is not a producing cause of the claimant's current low back condition. Claimant contends that he never stopped suffering low back pain after his \_\_\_\_\_ compensable back injury, that he continued to work for several months even though he had pain, that he was not really working "full duty" even though he had been released to full-duty work, and that the \_\_\_\_\_ compensable injury was a "contributing cause to his current lower back condition."

Claimant testified that he was working as a floor hand on an oil rig when he sustained a compensable low back injury on \_\_\_\_\_, while he was pulling on a collar clamp. He said he felt back pain that radiated into his legs. Claimant said he was told he had a back strain, that he obtained pain medication and muscle relaxers from a doctor, and that he returned to light-duty work almost immediately. A medical report from November 1997 said that claimant complained of back pain, tingling in his left leg, and pain in both legs. Claimant said he worked light duty in November and December 1997. Claimant said that on December 23, 1997, the doctor told him to keep taking the medications and to try to work full duty. Claimant said he continued to work full duty for the same employer until July 1998. Claimant said that his brother was his supervisor and that he did not have to do the same type of work as he had done before. Claimant said he was unable to work at the same level as he had before his \_\_\_\_\_ compensable injury. Claimant testified that in July 1998, he and his brother went to work for (company 2). Claimant said he worked there for 17 days, and that he could not work for the continuous eight-hour shifts required by the job because no days off were allowed. Claimant said he then went to work for (company 3) because the shifts involved seven days working followed by seven days off work, which he said allowed him to "recuperate."

Claimant said he continued to use over-the-counter medications to treat his injury, but that as of October 1998, he no longer obtained relief from those medications. He said he decided to return to the same clinic he had gone to before for treatment of his compensable injury. Claimant said he was referred to Dr. V who diagnosed a herniated disc after MRI testing and suggested that claimant may require surgery. Claimant testified that he has opted to have surgery, but that he was told he cannot have treatment until the issues in this case have been resolved. Claimant denied that he sustained any injury subsequent to the \_\_\_\_\_ compensable injury. A 1998 MRI report indicates that claimant has a protrusion of disc material

at L5-S1. In an October 1998 report, Dr. V noted that claimant's diagnosis is "L5-S1 herniated nucleus pulposus" and that he had discussed surgical options with claimant. A November 10, 1998, off-work slip from Dr. V states that claimant is "unable to work." In a November 16, 1998, medical report, Dr. O stated that claimant's reflexes are intact, that he is able to heel-toe walk, that three out of three Waddell's signs were positive, and that palpation of the lower spine revealed pain. Although there was evidence from claimant and his brother that his back pain continued after his injury, two of claimant's coworkers, who he apparently worked with until July 1998, signed statements indicating that, although claimant did sustain a back injury, he did not continue to complain about back pain after his light duty ended.

We note that this case involves an issue of income benefits and that, therefore, the hearing officer did have jurisdiction over the issues in this case. The hearing officer could consider claimant's current condition and causation as it concerns income benefit issues. We would further note that this decision does not affect claimant's entitlement to lifetime medical benefits for his compensable injury. We will review the issue of whether claimant's \_\_\_\_\_, low back injury is a producing cause of the claimant's current low back condition as it concerns the claimant's entitlement to temporary income benefits in this case. The claimant had the burden of proving by a preponderance of the evidence that he continued to suffer the effects of his \_\_\_\_\_ compensable injury and that it was a cause of his alleged disability. Texas Workers' Compensation Commission Appeal No. 961390, decided August 30, 1996. Whether he did was a question of fact for the hearing officer to decide and his decision is subject to reversal on appeal only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer could consider the evidence that claimant was able to work full duty and that he was not complaining of continuing symptoms from December 1997 until the fall of 1998. The hearing officer could also consider the evidence from (Dr. M) that claimant's current complaints are not related to the \_\_\_\_\_ compensable injury. The hearing officer could and did determine from the evidence that claimant's \_\_\_\_\_ compensable injury is not a producing cause of the claimant's current low back condition. After reviewing the evidence in this case, we conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Claimant contends the hearing officer erred in determining that he did not have disability. Claimant contends there was medical evidence of disability from Dr. V, who placed him on light-duty status on October 16, 1998, and then took him off work on November 10, 1998. Claimant asserts that he claims disability beginning October 16, 1998, the first day he said he missed work due to his back injury, continuing to the present. 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). A compensable injury need only be a producing cause, not the only cause, of disability. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. A claimant has the initial burden of proving that the compensable injury is a producing cause of the disability. Texas Workers' Compensation Commission Appeal No. 950800, decided June 30, 1995; Texas Workers' Compensation Commission Appeal No. 950834, decided July 5, 1995; and Texas Workers' Compensation Commission Appeal No. 951418, decided October 5, 1995. In this case, the hearing officer apparently determined that

claimant did not meet his initial burden to prove that he had disability as a result of his \_\_\_\_\_ compensable injury. The hearing officer determined that the “claimed inability” to earn the preinjury wage was “not due to the compensable injury of \_\_\_\_\_.” After reviewing the record, we conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Finally, we would again note that this decision does not affect claimant’s entitlement to lifetime medical benefits for his compensable injury.

We affirm the hearing officer’s decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge