

APPEAL NO. 990770

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 March 17, 1999. The issue at the CCH was whether respondent (claimant) had disability from his \_\_\_\_\_, compensable injury. The hearing officer determined that claimant had disability from December 5, 1997, to June 2, 1998, from which determination appellant (carrier) appeals on sufficiency grounds. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends that claimant did not meet his burden to prove that he had disability from December 5, 1997, to June 2, 1998. Carrier asserts that claimant had originally pursued his claim as a back injury claim and that he alleged disability due to a hernia/groin injury claim only after it was determined that he did not have a compensable back injury. Carrier asserts that the peer review report from Dr. B fails to show that the claimant was disabled as a result of the agreed-upon compensable groin and hernia injury. Carrier complains that claimant was released to full duty by Dr. L on November 21, 1997, that he was "laid off" on December 5, 1997, and that he sought temporary income benefits only after he was "laid off" from work.

The claimant has the burden to establish that he had disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The carrier has the burden to show that something other than the compensable injury is the sole cause of disability in order to be relieved of liability for income benefits. Texas Workers' Compensation Commission Appeal No. 961989, decided November 21, 1996. The testimony of the injured employee, even if contradicted by medical evidence, may establish that the employee had disability. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In this case, the hearing officer had before him evidence from Dr. B that claimant was taken off work effective January 29, 1997, due to his groin pain, possible right inguinal hernia, and back problems. Claimant said that after his \_\_\_\_\_, injury, he returned to work, but he did not perform the same heavy work that he had done before. He said the work he did was lighter but was still "heavy for [him]." He testified that from December 5, 1997, the day he was "laid off," to the date of the CCH, he was unable to do the kind of heavy lifting work he was doing when he sustained his injury. A June 2, 1998, report from Dr. W stated that claimant's pain in his groin and testicular region had resolved.

Whether claimant had disability due to the compensable groin/hernia injury involved a fact issue for the hearing officer. He reviewed the evidence and determined what facts the evidence established. The hearing officer considered the evidence from Dr. B that claimant had been taken off work along with claimant's testimony that he was not able to do the work he had done before. The hearing officer weighed the evidence and heard claimant's testimony about his continuing problems. The hearing officer was the sole judge of the credibility of the evidence. He determined that claimant had disability due to the compensable injury. We will

not substitute our judgment for that of the hearing officer 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge