APPEAL NO. 990783

Following a contested case hearing held on March 25, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) sustained a compensable injury on _____, and that he did not have disability. Claimant has appealed the disability determination, asserting that the evidence established that he had disability from September 10, 1998, to January 8, 1999. The respondent (carrier) contends, in response, that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

Not appealed are findings that claimant injured his low back on _____ (all dates are in 1998 unless otherwise stated), while lifting a battery for (employer); that he was furthering the affairs or business of the employer at the time of the injury; and that he worked from July 14th through September 10th performing his usual and customary duties and receiving his preinjury wage. Inferentially appealed are findings that claimant resigned his position on September 10th because the employer would not pay for his chiropractic charges and that his inability to work from September 10th through January 8, 1999, was not a result of the _____ compensable injury. Accordingly, only the evidence pertinent to the disability issue will be discussed.

Claimant testified that his job with the employer involved the sale and delivery of batteries; that on _____, he injured his low back lifting batteries onto a customer's shelf; and that he reported the injury to a supervisor on that day and also commenced chiropractic treatment with Dr. H who had previously treated him for a groin injury. Claimant indicated that he was seen by Dr. H three times a week until about July 29th; that he continued to perform his usual duties and worked in pain although the pain subsided somewhat; and that he did not receive treatment from Dr. H after July 29th until September 14th because he did not know who was going to pay for it. He explained that his immediate supervisor, Mr. F, did not want him seeing a chiropractor, tried to discourage him from making a workers' compensation claim, and would not tell him how Dr. H's bills would be paid. He also said he could have either paid for Dr. H's treatment out of his own pocket or used his wife's health insurance and he had no explanation for not doing so. He also had no explanation for not seeing another type of doctor. Claimant further testified that he resigned both because he could not continue to do the work and because he was angry. He agreed that he had probably told someone he would still be working there if the employer had taken care of his medical bills. Mr. O, a warehouse supervisor for the employer, testified that shortly after claimant resigned, claimant told him he would still be working there had the employer taken care of his medical bills. A statement from Mr. F stated that, until claimant resigned on September 9th, claimant refused to cooperate with the employer or furnish the necessary information to file a claim; that claimant said he was

not filing a workers' compensation claim; and that claimant said he was paying the chiropractor through his wife's group insurance.

Claimant further testified that he resigned his employment on or about September 10th; that he resumed treatment with Dr. H on September 14th when his leg began to hurt in addition to his low back; that he was treated three times a week for a couple of months, then twice a week, and now receives treatment once a week; and that on January 25, 1999, he commenced employment with a tire company which paid approximately the same wages he was earning while employed with the employer.

In an Initial Medical Report (TWCC-61), dated September 14th and reflecting claimant's visit on that date, Dr. H reported that claimant is able to work light duty at present. In a Specific and Subsequent Medical Report (TWCC-64) of October 12th, Dr. H stated that claimant's work status is to be determined with MRI findings. Dr. H's November 4th record states that claimant was treated from _____ to July 29th; that after July 29th, claimant did not return for treatment until September 14th; that claimant quit his job to protect himself from further injury and possible surgery; and that he does not feel that claimant should return to work until a lumbar spine MRI is obtained. Dr. H reported on December 16th that the MRI revealed degeneration of facet joints and a mild disc bulge; that claimant has improved with treatment; and that he recommends electro- diagnostic studies to investigate claimant's left leg pain. Dr. H wrote on February 2, 1999, that claimant's disability began on September 14th and that he was returned to work on January 8, 1999.

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). Claimant had the burden to prove by a preponderance of the evidence that he had disability and the period of the disability, and the resolution of this disputed issue presented the hearing officer with a question of fact to resolve. The hearing officer found that claimant worked from July 14th through September 10th performing his usual and customary duties and receiving his preinjury wages; that he resigned his position on September 10th because the employer would not pay for his chiropractic charges; and that his inability to work from September 10th through January 8, 1999, was not a result of the compensable injury of _____. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider the evidence showing that claimant worked at his regular duties without treatment after July 29th until he resigned on or about September 10th and the fact that claimant said he would still be working there had the employer paid for his chiropractic expenses.

The decision and order of the hearing officer are affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge