APPEAL NO. 990846

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 March 25, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, because he was in the course and scope of his employment at the time of his motor vehicle accident on that date, and that he had disability as a result of his compensable injury from _____ to November 23, 1998. In his appeal, the claimant asserts that the hearing officer erred in ending disability on November 23, 1998, arguing that the claimant's disability has continued since the date of his injury. In addition, the claimant asserts that the hearing officer erred in not permitting the claimant to use his handwritten notes to refresh his memory as to the dates he missed work because of his compensable injury and in not admitting the last four pages of Claimant's Exhibit No. 7, which was comprised of the claimant's time sheets. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant sustained a compensable injury in the motor vehicle accident of _____, and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

It is undisputed that the claimant sustained compensable cervical and lumbar strain/sprain injuries as a result of the motor vehicle accident in which he was involved on _____. The claimant went to the emergency room shortly after his accident on _____ and thereafter, he sought treatment from Dr. BH, his primary care physician. In an off-duty slip of October 12, 1998, Dr. BH stated that the claimant should not lift over 20 pounds "for approx three weeks." In a report of October 16, 1998, Dr. BH diagnosed cervical and lumbar sprains and noted that the claimant had a "good prognosis, better one month." In a note of November 23, 1998, Dr. BH stated that the claimant was "released to return to work, full duties." In a "To Whom it May Concern" letter dated January 7, 1999, Dr. JH, a chiropractor who is also treating the claimant, stated that due to the claimant's _____, compensable injury, "it was necessary for him to miss work on 12-10-98, 12-14-98, 12-17-98, 12-18-98, and 12-21-98."

The claimant testified that he missed two and one-half hours of work on _____, and all day from October 6 to November 24, 1998. In addition, he stated that he missed work because of his compensable injury on December 1, December 14, December 17, December 18, from December 21 to 24, from December 28 to 31, 1998, and on January 4, 1999. The claimant maintained that he could not recall with specificity the days he missed work after January 4th; however, he testified that he had not worked as a result of his compensable injury from March 4, 1999, through the date of the hearing.

The hearing officer determined that the claimant's disability ended on November 23, 1998, when Dr. BH released the claimant to return to full-duty work. The question of whether the claimant had disability is a question of fact for the hearing officer. The claimant has the burden to prove disability. Generally, disability questions can be proven by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, it is well-settled that the hearing officer is not bound by the claimant's testimony. Rather, it only presents an issue of fact for the hearing officer to resolve. A review of the hearing officer's decision reveals that he determined that the claimant's disability ended when Dr. BH released the claimant to full duty. The hearing officer was acting within his province as the sole judge of the weight, credibility, relevance, and materiality of the evidence under Section 410.165 in so finding. Our review of the record does not reveal that the hearing officer's determination ending disability on that date is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the disability determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant asserts that the hearing officer erred in not permitting the claimant to refresh his recollection about the dates he missed work by looking at his handwritten notes. The claimant argues that under Section 410.163(b) the hearing officer had a duty to fully develop the facts required for the determination to be made. We cannot agree that the denial of the claimant's request to review his handwritten notes necessitates a reversal of the disability determination in this instance. The hearing officer stated that he would not permit the claimant to review his notes because to do so would circumvent the exchange requirements. The claimant did not exchange his handwritten notes with the carrier and the hearing officer determined that if the claimant were to testify as to the contents of those notes it would be tantamount to admitting the document in evidence. The hearing officer's decision in that regard is reviewable under an abuse of discretion standard. After carefully reviewing the record, we cannot agree that the hearing officer abused his discretion. We note additionally, that the claimant recalled the dates of work he missed without looking at his notes until December 1998. He indicated that he needed to review his notes to determine the dates he missed work in the period from January to March 1999. The hearing officer ended disability at the point of Dr. BH's full-duty release on November 23, 1998. He rejected the claimant's testimony as to the dates he missed work in December 1998, noting that the claimant did not provide "substantiating medical information." The hearing officer declined to extend disability past November 23, 1998, as the result of cervical and lumbar strain injuries in the absence of credible medical evidence to support the claim that disability was ongoing. Accordingly, it appears that even if the hearing officer erred in not permitting the claimant to review his notes, any such error was harmless, in that it was not "reasonably calculated to cause or probably did cause rendition of an improper judgment." Hernandez v. Hernandez , 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The claimant also asserts that the hearing officer erred in excluding the last four pages of Claimant's Exhibit No. 7. At the hearing, the carrier objected to the admission of those pages of the exhibit. A brief discussion between the claimant's attorney, the carrier's

attorney and the hearing officer followed. Eventually, the claimant's attorney stated "[y]our honor, we'll withdraw the last four sheets." (Transcript p. 21.) As such, we find no merit in the assertion that the hearing officer erred in excluding those pages of the exhibit because they were withdrawn, not excluded.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge