

APPEAL NO. 990938

On April 9, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). With regard to the issues at the CCH, the hearing officer decided that appellant (claimant) sustained a compensable injury on \_\_\_\_\_; that claimant had disability from December 31, 1998, to March 31, 1999; that employer's offer of employment was not bona fide after January 13, 1999; and that, effective January 14, 1999, respondent (carrier) is liable for reasonable and necessary health care provided by, or at the direction, of Dr. H. Claimant requests reversal of the hearing officer's decision that she had disability from December 31, 1998, through March 31, 1999. Claimant requests that we render a decision that her disability continued after March 31, 1999. Carrier requests affirmance.

DECISION

Affirmed.

"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 testified that on \_\_\_\_\_, as she was lifting a 20-pound box of merchandise at work, she felt a pop in her back, lost her balance, and fell on her left knee. Claimant said that since her injury she has had upper back and neck pain and headaches and that she also had knee pain but that her knee feels better now. Claimant said that she is unable to work even light-duty work offered by her employer. Claimant went to Dr. L on January 6, 1999, and he wrote that claimant should be excused from work until January 11th and then work light duty. Claimant said that after seeing Dr. L employer had her examined by a physician's assistant on January 6th and he wrote that claimant has a soft tissue injury of the left knee and a cervical strain and that claimant should be on restricted work through January 11th. Claimant then went to Dr. H on January 6th and he diagnosed claimant as having a neck sprain, a thoracic sprain, and a knee contusion and noted that he anticipated eight to 10 weeks of treatment. A radiologist reported that x-rays done on January 12th showed degenerative changes in the cervical spine, a normal examination of the thoracic spine, and a normal examination of the left knee. Claimant has continued to treat with Dr. H and he has issued a series of statements noting that claimant is unable to work, with the last statement being dated April 9, 1999, the day of the CCH.

Claimant said she underwent physical therapy for four weeks beginning on January 20th. Dr. H referred claimant to Dr. M for an orthopedic evaluation and Dr. M reported on February 19th that claimant has soft tissue injuries to the cervical spine, thoracic spine, and left knee due to her work injury; that claimant should continue with conservative care; and that a work hardening program may be necessary. On March 11th a physical therapist reported that claimant tested at a "sedentary light physical demand level" and that that was below the physical demand level of her job. The therapist recommended a work hardening

program. Claimant said that on the date of the CCH she was in a six-week work hardening program and had two more weeks of that program to complete.

Claimant was examined by Dr. W at carrier's request on March 26th and Dr. W reported that claimant reached maximum medical improvement on March 26, 1999, and that she has a zero percent impairment rating. Dr. W noted the results of the previous x-rays and also noted that on March 12, 1999, claimant had normal MRI studies of her cervical and thoracic spine. Dr. W diagnosed claimant as having cervical and thoracic pain syndrome without objective abnormalities on physical examination, signs of pain behavior, and a resolved knee contusion. Dr. W wrote that he would expect claimant to return to full, unrestricted work at the end of the work hardening program "as there is no objective reason why she cannot."

The hearing officer found that claimant sustained a relatively minor injury; that she was unable to work from \_\_\_\_\_, to March 31, 1999, because of her injury; and that she did not have disability after March 31, 1999. The hearing officer concluded that claimant had disability from December 31, 1998, to March 31, 1999. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that sufficient evidence supports the hearing officer's disability decision and that that decision is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Tommy W. Lueders  
Appeals Judge