

APPEAL NO. 990970

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 November 25, 1998. The single issue at that CCH was whether the appellant (claimant) had disability from a back injury of _____. The hearing officer determined, in a single, conclusory finding of fact, that the claimant had not sustained disability. Because of the lack of any adequate underlying findings of fact, particularly given the significant medical evidence and the course of the compensable injury and treatment, we reversed and remanded the case for further consideration and findings of fact to support the conclusion and decision. Texas Workers' Compensation Commission Appeal No. 990092, decided February 10, 1999. The case now returns with several new findings of fact to support the determination that the claimant did not have disability from _____, through the date of the initial hearing, November 25, 1998. The claimant appeals these findings of fact and urges they are against the great weight of the evidence. Respondent (carrier), citing the Appeals Panel's standard of review in factual sufficiency situations, urges that the determination of the hearing officer is not so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust.

DECISION

Affirmed

The evidence in this case is set forth in our previous decision and will not be repeated here. Appeal No. 990092, *supra*. At the hearing on remand, two medical records (a March 4, 1999, Electrodiagnostic Medicine Consultation and a March 15, 1999, Ergos Evaluation Report) were offered, objected to, and rejected by the hearing officer and the matter is not on appeal. Also, on June 8, 1999, and well after the filing of this appeal, received May 5, 1999, and the response thereto received May 14, 1999, a faxed document was received by the Appeals Panel from the claimant attaching a May 5, 1999, amended letter from the Texas Workers' Compensation Commission which indicated another spinal surgery evaluation had taken place and been approved. (As discussed in our prior decision, spinal surgery was not approved following an earlier dispute.) There is no indication that this document was sent to or served on the carrier. This document is not considered in our review of this case, the issue being disability from _____, through November 25, 1998, and our decision only goes to that limited issue.

We have reviewed the hearing officer's findings on remand and conclude there is some factual basis and findings supporting his conclusions and decision needed for our review and action. Regarding his determination that the claimant did not have disability during the time frame in issue, he found that during the period his activity was inconsistent with disability because "he was engaged in activities consistent with his job activities prior to his termination." The video and other evidence set out in the prior decision supports this finding. The hearing officer also found that the claimant was able to walk, stand, lift up to 30 pounds, sit and exercise which was contrary to an inability to obtain or retain

employment at wages equivalent to his preinjury wage. There is support in the evidence for this finding as set forth in our previous decision. Although the claimant's testimony was in direct conflict with these findings, it was clear from the hearing officer's discussion that he did not find the claimant credible, an evaluation he is entitled to make. Section 410.165(a).

Although not necessary, and not a pivotal factor in our disposition of this case, the hearing officer also finds that there was a misdiagnosis, that the claimant misrepresented and exaggerated his subjective complaints, and that a protrusion at L5-S1 does not produce nerve root entrapment or thecal sac effacement. As we have repeatedly held, a hearing officer's decision may be affirmed on any grounds supported by the evidence. Texas Workers' Compensation Commission Appeal No. 962174, decided December 12, 1996, and cases cited therein. We conclude that there is sufficient evidence to support the hearing officer's first two findings and that these findings can suffice to support the conclusions and decision rendered that the claimant did not have disability from _____, through November 25, 1998.

Accordingly, we affirm the decision concerning no disability from _____, through November 25, 1998.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge