APPEAL NO. 991042

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 8, 1999, a contested case hearing was held. The issues concerned whether the respondent, who is the claimant, had disability for the period from January 13 through February 10, 1998.

The hearing officer determined that the claimant had disability for the period from January 13, 1998, through February 10, 1998.

The appellant (carrier) has appealed and argues that the evidence does not support disability, and that the medical evidence is insufficient because it is "conclusory." The claimant has not responded.

DECISION

Although different inferences could have been drawn, the decision is affirmed as not reversible under our standard of review.

The carrier has argued that the Appeals Panel has held that conclusory medical statements can be given no weight. We would respectfully point out that analysis of inability to work for purposes of supplemental income benefits is a different issue from analysis of disability. Even then, the Appeals Panel has held that a trier of fact may determine to give weight to "conclusory" medical evidence and there is no prohibition on weighing it for that fact alone. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. We have consistently stated the proposition that a claimant's testimony alone may establish that an injury has occurred and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ).

The claimant injured his back on _____, and had not worked essentially since that date. He said his work experience was heavy duty work and he had been off work since shortly after his injury. Although he stressed that his restrictions precluded him from working at his old job, he also stated his belief that he was not physically capable of work for the period in dispute.

Claimant stated, and it was not disputed, that he had been paid temporary income benefits (TIBS) until January 13, 1998, at which time they were stopped. He was found to be at "statutory" maximum medical improvement beginning February 10, 1998. It was his understanding he had never been released to work. He stated that he believed his TIBS were stopped due to missing a benefit review conference. There was also evidence that the claimant failed to appear at some ordered required medical examinations. Claimant said that during the period in question, he was having domestic problems with his wife and had moved away from his residence, and was therefore dependent upon her for informing

him about mail received. He said that he had low back pain in the disputed period that radiated into his legs.

Much of the evidence was devoted to litigating matters that would have been more pertinent to early disputes over TIBS (if there had been any) or to failure to appear at scheduled proceedings or examinations. As to the period of time in question, a brief statement from the claimant's treating doctor, Dr. H, was presented that summarily contends an inability to work for the disputed period. This letter invited those who needed more information to contact Dr. H. Claimant testified that he obtained this note after the carrier stated that all it would need would be a doctor's statement asserting inability to work for this period. Claimant testified as to daily activities during the time in controversy. Claimant was in his early 30s. In May 1998, claimant was examined by Dr. N, who found essentially a normal examination but nevertheless awarded a five percent impairment rating, apparently due to a small lumbar protrusion at L4-5. Although evidence was produced the claimant had a functional capacity test in 1996 that recommended a full release to work. However, it appears that in February 1998, Dr. R recommended that the claimant be evaluated by a spine surgeon. From this note, it can be concluded that the claimant asserted that he had stopped attending therapy because it was not helpful.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. While it may be that there were inconsistencies to resolve, the state of the record is not such that a decision against

the claimant was compelled, although plainly another finder of fact could have questioned why what was essentially a back strain resulted in over a year's worth of unemployment, and the apparent unquestioned payment of TIBS for so long. However, we do not agree that the great weight and preponderance of the evidence is against the hearing officer's decision, and affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Judy L. Stephens
Appeals Judge