

## APPEAL NO. 991075

This appeal after remand 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 January 29, 1999. She (hearing officer) determined that appellant (claimant) did not sustain an occupational disease injury "on" \_\_\_\_\_, and that she did not have disability. Claimant appealed, contending that she did sustain an occupational disease neck injury. Respondent (carrier) responded that claimant had only an ordinary disease of life and that the Appeals Panel should affirm the hearing officer's decision and order. The Appeals Panel reversed the hearing officer's decision and rendered that claimant sustained a compensable injury. The Appeals Panel remanded the disability issue to the hearing officer for reconsideration regarding whether claimant sustained a specific injury as opposed to an occupational disease cervical injury, and whether she had disability. The Appeals Panel noted that claimant appeared confused regarding what type of injury she was claiming, that the parties acknowledged that claimant appeared to be claiming a specific injury, and that the hearing officer noted in the first decision and order that claimant did sustain a cervical strain. However, the hearing officer determined that the claimant did not sustain an occupational disease injury and did not have disability, so no benefits were due. Texas Workers' Compensation Commission Appeal No. 990396, decided April 12, 1999. On appeal after remand, the hearing officer noted that she had already determined that claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage from July 30, 1998, to August 13, 1998, as a result of her cervical sprain injury, although claimant was claiming disability up to the time of the CCH. The hearing officer again made the same determination. The hearing officer did not hold a second hearing on remand. Claimant again appealed, contending that she has had disability since July 30, 1998.

### DECISION

We affirm.

Claimant contends, as she did in her first appeal, that the hearing officer erred in determining that her disability period ended on August 13, 1998. The facts of this case are adequately set forth in our prior decision and in the hearing officer's decision and order and will not be repeated here. Briefly, claimant testified that on \_\_\_\_\_, she was working jerking strips of material when she felt a terrible pain in her neck. Claimant said that after she felt the pain and cried out, she went to the doctor that day and was placed on light-duty status. Claimant said her employer did not have any light duty that she could perform and that she has not worked since July 30, 1998. Claimant saw Dr. B, who initially took claimant off work. When Dr. B saw claimant on August 13, 1998, he noted that he could not find a neurological explanation for the degree of pain that claimant said she was experiencing. He noted that claimant said she would be treating with Dr. K in the future. In an October 1998, letter, Dr. K said claimant is "off work due to an aggravation of a pre-existing condition related to the job activity over the years of working with her head down, repetitive neck movements and so on."

The applicable law and our appellate standard of review is set forth in our prior decision and order. In this case, the hearing officer determined that claimant's period of disability ended on August 13, 1998. The hearing officer was the sole judge of the weight to be given to the evidence in this case. We will not substitute our judgment for hers because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge