

APPEAL NO. 991218

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was scheduled for May 6, 1999. The appellant (claimant) did not appear. On that day, the hearing officer, issued a Show Cause Order and Setting for a CCH to the claimant advising that a CCH was to be held on May 18, 1999, and that he was ordered to appear and offer evidence of good cause for his failure to appear at the CCH on May 6, 1999, and that the show cause hearing would be followed by a CCH on the merits of the contested issue. That document was sent by the Texas Workers' Compensation Commission (Commission) to the claimant by certified mail, return receipt requested. Notices were sent to the claimant on May 7 and 10, 1999, and the envelope was returned to the Commission as unclaimed. A CCH was held on May 18, 1999. The attorney representing the respondent (carrier) and the attorney representing the claimant appeared, but the claimant did not. One claimant's exhibit and six carrier's exhibits were admitted into evidence. It is undisputed that the claimant sustained a compensable injury; that a CCH was held on December 9, 1998; and that another hearing officer determined that the claimant had disability from September 17, 1998, to November 7, 1998. In the case before us, the issue was whether the claimant had disability beginning on January 26, 1999, and continuing through March 14, 1999. The hearing officer determined that the claimant did not have good cause for failing to attend the May 6, 1999, CCH and that he did not have disability beginning on January 26, 1999, and continuing through March 14, 1999. The claimant appealed, urged that the great weight of the evidence is contrary to the determination that the claimant did not have disability as claimed, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he had disability beginning on January 26, 1999, and continuing through March 14, 1999. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant introduced a work status report dated November 6, 1998, from Dr. N, a chiropractor, stating that the claimant was on light duty with lifting of no more than 10 to 20 pounds from November 7 to 13, 1998. A "Walking File Treatment Documentation" from the office of Dr. N contains nine daily entries covering the period starting on January 22, 1999, and ending on February 4, 1999. An entry dated January 26, 1999, states that the claimant was taken off work January 26 to February 3, 1999. In the statement of the evidence in her Decision and Order, the hearing officer stated the contents of the work status report and the note dated January 26, 1999, and said that the claimant did not testify to support his position on the disputed issue and did not meet his burden of proof. A letter to the claimant from the employer dated October 6, 1998, states that he was offered light-duty work at the same rate of pay and set forth the restrictions of the doctor that would be complied with. A transcript from the prior CCH indicates that the claimant testified that he was told to forget that the accident happened and go back to work, that he felt threatened because of the

tone of the voice, and that he would not go back to work for an employer who holds grudges against its employees.

The burden is on the claimant to prove by a preponderance of the evidence that he had disability as claimed. Texas Workers' Compensation Commission Appeal No. 93953 decided December 7, 1993. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Her determination that the claimant did not have disability beginning on January 26, 1999, and continuing through March 14, 1999, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge