APPEAL NO. 991300

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 19, 1999. He (hearing officer) determined that the respondent (claimant) had disability from July 21, 1998, to February 25, 1999, as a result of a compensable injury of _____, and that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change of treating doctors. The appellant (carrier) appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked five hours per day as a food preparer at a restaurant. On _____, she injured her lower back in a slip-and-fall accident. The carrier does not dispute the existence of a compensable injury. The claimant continued working for her preinjury wages after the injury, although she indicated that at first she was given lighter duties. According to the claimant, the pain continued and she asked her supervisor if she could see a doctor. The employer then referred her to Dr. L, whom she first saw on April 3, 1998. He placed her in a light-duty status, noted "no muscle spasm apparent," diagnosed a lumbosacral contusion, and prescribed exercise therapy. Dr. L saw the claimant again on April 22, May 6 and 20, 1998. At the May 20, 1998, visit, he wrote that the claimant was "pleased with her progress," was to remain on light duty and "[s]he will come back in three weeks and hopefully will end her care at that time." The claimant disagreed with Dr. L's statement that she was pleased with her progress. She never returned to see him, but continued working through July 20, 1998. By then, she said, her back was hurting "a lot," and she stopped working. She said she did not go back to Dr. L because she was not satisfied with his treatment and obtained no relief from it.

In November 1998, she said she saw a TV ad featuring Dr. R, D.C., which said he would take a patient off work for the time needed to get better. On November 6, 1998, the claimant submitted to the Commission an Employee's Request to Change Treating Doctors (TWCC-53), which was approved on November 9, 1998. The reasons stated in her request were that she had "never had the opportunity to choose my own doctor" and she found a new doctor who could help her more. The claimant then received treatment from Dr. R on November 12, 1998. At this visit, Dr. R placed her in an off-work status. His primary diagnosis was lumbar sprain/strain. According to the claimant, she was able to return to work in February 1999.

The claimant had the burden of proving disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether disability exists is a question of fact and can be established through claimant's

testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer found the claimant credible in her testimony and evidence that her pain continued and increased along with her duties after the injury. The carrier relies on Dr. L's comment that the claimant had essentially recovered as of her last visit or shortly thereafter, and asserts that the claimant "took herself off of work voluntarily, and did not do anything from an occupational standpoint." It further argues that Dr. R lacks credibility for placing the claimant in an off-work status for a minor injury. What the carrier asserts may arguably be true, but it was for the hearing officer as fact finder to evaluate the evidence and determine what facts had been established. Section 410.165(a). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Under this standard of review, we find the evidence sufficient and affirm the determination of disability.

Section 408.022 provides that an injured worker is entitled to an initial choice of treating doctors and may request to change treating doctors if unsatisfied with the initial choice. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c) states that a doctor recommended by the employer is not the employee's initial choice of treating doctors "unless the injured employee continues, without good cause as determined by the commission, to receive treatment from the doctor for a period of more than 60 days[.]" It was not disputed that Dr. L was an employer-recommended doctor and that his period of care of the claimant was from April 3 to May 20, 1998, a period less than 60 days. The claimant thus was entitled to select Dr. R as her initial treating doctor and we find no abuse of discretion in the Commission's approval of the request to change treating doctors to Dr. R. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge