

APPEAL NO. 991607

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 6, 1999, a contested case hearing was held. He determined that respondent (claimant) had disability beginning December 11, 1998, and continuing through February 28, 1999, except for December 16, 1998. Appellant (carrier) appeals the disability determination on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier challenges the hearing officer's disability determination on sufficiency grounds. Carrier complains that claimant continued to work until December 11, 1998, after her injury, that she took herself off work, that she had a work release to return to full-duty work, and that the only reason she was unable to earn her preinjury wage was because she quit her job.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury and that she has disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The Appeals Panel has affirmed a determination that a claimant had disability after she voluntarily resigned when a doctor told her not to work, in part, due to her compensable injury. The hearing officer may consider the fact that a claimant resigns, retires or is involuntarily terminated, but this does not foreclose the existence of disability. Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995,

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that a metal bar fell on her shoulder at work on _____. She said she sought treatment in the emergency room of the hospital where she worked and that she was told she had some bruises. Claimant said an orthopedic specialist recommended physical therapy, that it did not help her, and that she was returned to regular duty. She testified that after she pulled on a trash bag at work in December 1998, her shoulder condition worsened. Claimant said that she went back to the doctor, that he gave her an injection and a light-duty release for one day, December 12, 1998, only, but that she could not go back to work. Claimant said she did not work December 11 through 15, 1998, that

she tried to work December 16, 1998, and that she resigned that day because she could not do the work. Claimant said she had inquired about light-duty work, but she was told that she could not work light duty because she had been released to full duty. A February 1999 MRI report states that claimant has a "full thickness rotator cuff tear" and "undersurface partial tears of the infraspinatus tendon." A March 1999 operative report indicates that claimant underwent shoulder surgery to treat these conditions. There was evidence that, and the hearing officer noted that, on February 12, 1999, her doctor placed her on light-duty status retroactive to December 11, 1998. Claimant said she did not attempt to work light duty at that time because she was about to have surgery.

The claimant's testimony that she was unable to do her work and the evidence regarding the MRI results and surgery support the hearing officer's disability determination. Voluntary resignation from gainful employment is a factor to be weighed regarding disability. However, the hearing officer determined that the effects of the injury led to claimant's resignation. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Carrier complains that claimant did not seek a light-duty job from employer after she received a light-duty release in February 1999. There is no issue of bona fide offer in this case. The hearing officer decided what weight to give claimant's testimony regarding whether she attempted to look for work while she was seeking treatment for her shoulder injury after she resigned. Carrier also complains of certain fact findings regarding whether claimant had pain and whether she resigned and could not work due to her pain. The hearing officer decided what weight to give to the evidence in this regard and we will not substitute our judgment for his because his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We perceive no error in the disability determination.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge