APPEAL NO. 991767

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 22, 1999, a hearing was held. She (hearing officer) determined that respondent (claimant) had disability from April 17, 1999, to the date of hearing. (The date of injury was _____.) Appellant (carrier) asserts that the decision is remarkable and against the great weight and preponderance of the evidence, citing lay evidence presented and asserting further that claimant's medical evidence is insufficient. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

The only issue at this hearing was whether claimant had disability from April 17, 1999, to the present. That question is one of fact for the hearing officer to answer, which she did. The Appeals Panel will only overturn a hearing officer's factual determination when against the great weight and preponderance of the evidence; the determination is not against the great weight and preponderance of the evidence.

Claimant worked for (employer) on _____; he stated that he worked with boilers and pipes. On _____, there was an explosion some distance from claimant and others which knocked claimant to the ground. As he was then leaving the scene, another explosion again knocked him to the ground. He saw Dr. Gi on December 9, 1998, at which time Dr. Gi restricted claimant to "office work only." Claimant testified that he did various light-duty tasks for employer, while being paid his regular wage, until April 9, 1999, when he was told there was no longer light-duty work available and that he would have no work until he obtained a doctor's release. Claimant's assertion in this regard is confirmed by a form provided by employer which said on April 21, 1999, that claimant last worked on April 9, 1999, and that no light duty was available as of April 9, 1999.

Claimant had requested a change of treating doctor on March 12,1999, referring to Dr. Gi as the "company doctor." The new treating doctor was Dr. Gu. Dr. Gu said on June 3, 1999, that he had treated claimant since April 29, 1999, and stated that he "is still disabled, and is not yet able to return to work." He indicated that light duty may be possible once claimant was fully evaluated.

There was no medical evidence presented which said that claimant was able to do unrestricted work.

At the hearing, carrier provided lay testimony from the safety director of employer, Mr. B. He testified that he had watched claimant work, during his period of light-duty work for employer, and he was of the opinion that claimant could do unrestricted work. In addition, a statement from a co-employee said that claimant at one time indicated that he was ready to return to his old job. Other statements indicated that claimant was able to do

light-duty activities which employer provided during the period of light-duty work. In addition, carrier provided an investigator, (OH), who testified that he observed claimant move a chest during a garage sale that he estimated to weigh 10 pounds; he also saw claimant climb a ladder up to his roof and then descend the ladder from the roof without assistance. The evidence indicated that a video was made, but no video was offered into evidence.

Claimant testified on cross-examination that he did not seek a job with some other employer within the "restricted light duty limitations." He also testified that although he used a riding mower to mow his neighbor's yard, he is not capable of working now because of low back pain. He also said that the work he did under restricted duty was not similar to what he had done before he was injured.

The summarized facts stated herein and all the evidence presented at this hearing provided the hearing officer with a factual question. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. At the hearing, carrier cited Texas Workers' Compensation Commission Appeal No. 92209, decided July 13, 1992. That decision stated that a hearing officer should consider all relevant evidence in determining disability, including a video which provided that hearing officer with additional evidence to weigh. Appeal No. 92209 did not say that the fact finder should give more weight to lay evidence than to medical evidence.

The hearing officer determined that employer paid claimant to April 17, 1999, after informing him on April 9, 1999, that no more light duty was available, and found that claimant was unable to obtain or retain employment at equivalent wages to those he made prior to the accident from April 17, 1999, to the present. (We note that injury occurred in December 1998; all references to other months by the hearing officer pertain to 1999, not 1998.) Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, addressed medical releases and said that when a conditional release is provided, disability "has not ended unless the employee is able to obtain and retain employment at wages equivalent . . . ." That case did not indicate that an employee, under such a conditional release, was obligated to look for work, particularly under the facts presented wherein no evidence of termination had been provided.

The hearing officer apparently chose to give more weight to the medical evidence and the testimony of claimant than she did to observations made by lay workers and investigators. While carrier argued that there was no objective medical evidence to warrant disability, there is no requirement that objective medical evidence be present in order to substantiate disability, although a hearing officer may always consider objective evidence when presented.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge