

APPEAL NO. 991822

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contrary to our direction, a contested case hearing (CCH) on remand was held on July 16, 1999. The record was held open for receipt of a medical report and was closed on July 24, 1999. In Texas Workers' Compensation Commission Appeal No. 990621, decided May 28, 1999, we affirmed the hearing officer's decision on a compensable injury and that respondent (claimant) had timely reported his injury to the employer. We remanded the decision for the hearing officer to find an ending date of disability supported by some evidence or explain how he arrived at a date of October 15, 1998 (all dates are 1998), given claimant's position at the benefit review conference that she had disability from August 10th to September 10th. The hearing officer, in this decision, determined that claimant had disability from July 16th to October 16th, citing evidence to support the October 16th ending date.

Appellant (carrier) again appealed, contending that there was no medical evidence to support the claim for disability, that there was no medical evidence to support an injury (a matter resolved in Appeal No. 990621) and that the disability "should be limited to the period which was claimed at the [CCH] for 8/10/98 through 9/10/98." Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from claimant.

DECISION

Affirmed.

The hearing officer explained how he reached his decision regarding the ending date of disability by referencing a transcribed statement of claimant taken by one of carrier's adjusters on October 16th. Specifically, the hearing officer cited the following exchange:

17. [by the adjuster] Okay, are you B have you recovered from the shoulder pain?
1. Uh, just a little bit, it still hurts now and then when I do uh my chores in my house.
17. Are you working somewhere else?
- A. No I'm not.
17. Okay. So B in other words, you're not in pain anymore, just B just enough where you can stand the pain where you're not seeing a doctor?
1. Uh huh.

17. Is that right?

1. Uh huh. I'm taking my prescription medicine that he gave me that day that I went out there.

17. And you still have that medication since August?

1. Yes I have.

In this Statement of the Evidence and Discussion, the hearing officer comments:

Therefore, I note that the ending date of disability should have been October 16, 1998, the date that statement was taken, rather than October 15, 1998. The October 15th date initially stated was a typographical one.

Carrier contends that the hearing officer's finding on disability was not supported by medical evidence. We have frequently noted that generally the hearing officer, as the fact finder, can find disability based on claimant's testimony alone, if it is considered credible, citing Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). In this case, the hearing officer obviously considered claimant's testimony credible and found disability ended on the date carrier's adjuster interviewed claimant. We hold that the evidence is minimally sufficient to support the hearing officer's determination.

Accordingly, the hearing officer's decision and order on the appealed issue are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge