APPEAL NO. 991824

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 29, 1999, a contested case hearing was held. The issues concerned whether the respondent, who is the claimant, had disability from his _____, injury beginning July 22, 1998, and continuing through March 14, 1999. The hearing officer held that the claimant had disability for this period.

The appellant (carrier) has appealed, arguing that the medical evidence submitted in this case was insufficient to establish disability. The carrier points out that the claimant's treating doctor had released him to full duty during much of the period in question. There is no response from the claimant in the appeals file.

DECISION

We affirm.

The claimant was employed by (employer) on _____, when he fell 20 feet from a platform, essentially injuring his right side. During the time period in issue, he said that pain in his heel and lower right back were severe and prevented him from working. The claimant had surgery on his foot with screws inserted.

The claimant's treating doctor through the period in controversy was Dr. H. Dr. H certified that the claimant was at maximum medical improvement (MMI) on July 21, 1998, with a nine percent impairment rating. A required medical examination found, however, that the claimant was not at MMI as of August 19, 1998. Dr. H stated that the claimant might require job retraining. On March 29, 1999, Dr. H wrote that the claimant had been unable to work through July 21, 1998, but was "now" released to work. Although the claimant was questioned on cross-examination as to whether Dr. H had given him a full release, there is no writing contemporaneous to the period in evidence, and the claimant testified he was never told by Dr. H that this was the case. The claimant said he walked with a cane during much of the period under review.

On February 25, 1999, the claimant first saw his new treating doctor, Dr. S. Dr. S restricted the claimant's activities on that date and recommended further foot surgery. He observed that the claimant had discrepant leg lengths, and a herniated lumbar disc and degenerative disease. Dr. S wrote on April 12, 1999, that the claimant was to avoid excessive bending, stooping, lifting, and overhead work. He wrote on May 10, 1999, that the claimant was "still off work" and had been since _____.

At the outset, it is worth repeating that there is no job search requirement for temporary income benefits as there is for supplemental income benefits and, consequently, the fact that a worker is released only to limited duty is evidence that disability continues, not that it has ended. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. Disability cannot be said to end when a restricted release is given. Texas Workers' Compensation Commission Appeal No. 941092, decided

September 28, 1994; Texas Workers' Compensation Commission Appeal No. 941566, decided January 4, 1995. As to times when the carrier argues that the claimant had been released to full duty, we have held that medical evidence is not required to prove disability, which can be established through the believed testimony of the claimant. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). The finder of fact may choose to believe the testimony of the claimant over that of the doctor and may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). While we agree that Dr. S's letter was nothing more than an observation that the claimant had been off work since his injury, the hearing officer was not required to be bound by either Dr. S or Dr. H.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). We affirm the decision and order of the hearing officer as having sufficient support in the evidence.

In reviewing the record, we cannot agree that the great weight and preponderance of the evidence is against the hearing officer's decision on the matter appealed, and we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge