APPEAL NO. 991912

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 5, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant sustained a compensable injury (lumbar strain) on _____, and had disability from _____, through February 28, 1999. The claimant appeals, pointing to evidence that he argues shows that he sustained more than a lumbar strain injury and that his disability runs through August 5th, the date of the CCH. Respondent (carrier) urges that there is sufficient evidence to support the decision and asks that it be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained a back injury on _____, as he lifted a five to 10-pound box and twisted. He mentioned it to his girlfriend, a coworker, and was advised to tell the supervisor. He claimed he did so and left work and went to his chiropractor who had treated him for a previous injury to the cervical/shoulder area. The chiropractor diagnosed myalgia, low back syndrome, and muscle spasms; opined that he had a new injury in the low back area; and began prolonged conservative treatment and took the claimant off work initially from _____, until February 28, 1999. The chiropractor subsequently issued formatted excusals indicating that "in order to avoid aggravation of his condition he needs to remain off work until he has exhibit [sic] significant improvement" which the hearing officer did not find persuasive. Radiology reports of February 8, 1999, were basically negative and an MRI on February 22, 1999, shows some disc bulging or herniation but did not demonstrate myelopathy. The hearing officer did not find the evidence persuasive that this condition was a result of any job incident of _____. Chiropractic treatment continued and a report dated April 15, 1999, indicates that the claimant was assessed an eight percent impairment rating. Claimant filed a report and claim of injury showing a mailing date of February 12, 1999.

The carrier called three witnesses, the claimant's lead man, the production manager, and the safety coordinator, who in essence stated that on _____, the claimant specifically stated that his back was bothering him from a prior injury, denied that it was from a current job-related incident, stated he wanted to go to his doctor from the prior injury for some medication, and never mentioned what part of his back was involved in the prior injury (cervical according to the claimant at the CCH). At the same time, claimant signed a brief statement written out by the safety coordinator that stated he had back problems from his back injury at his last job and that it has hurt ever since.

The hearing officer found minimally sufficient evidence to support a low back strain-type injury on _____, and found that disability ended on the date initially projected by

the chiropractor. While chiropractic treatment did continue after that date, the hearing officer could infer from the testimony and medical records regarding the claimant's condition that after February 28th he was not suffering disability as defined in the 1989 Act, that is, the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Clearly, there was considerable inconsistency and conflict in the evidence before the hearing officer and this was a matter for her resolution. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). We have reviewed the evidence and cannot conclude that her determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). This is so even though inferences different from those found most reasonable by the hearing officer find some support in the evidence. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Accordingly, the decision and order of the hearing officer are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Judy L. Stephens
Appeals Judge