

APPEAL NO. 991982

On August 9, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §' 401.001 *et seq.* (1989 Act). The issues at the CCH were whether appellant (claimant) sustained a compensable injury on _____, and whether claimant had disability. Claimant appeals the hearing officer's decision that she had disability from February 15, 1999, through March 16, 1999. Claimant contends that she had disability from February 15, 1999, through the date of the CCH and requests that we render a decision that she had disability for that period of time. Respondent (carrier) requests affirmance of the hearing officer's decision on the disability issue. There is no appeal of the hearing officer's decision that claimant sustained a compensable injury on _____.

DECISION

Affirmed.

Claimant testified that she felt back pain on her first day of work for the employer, _____, when she was stocking comforters and boxes of sausage. Claimant said that she has had constant back pain and has not worked since that day. Claimant went to Dr. R, D.C., on February 27, 1999, and Dr. R took claimant off work until March 16, 1999. Claimant then went to Dr. H, who wrote on March 30, 1999, that claimant is to be off work until further notice. A videotape taken on February 18 and 19, 1999, shows claimant riding in a car, standing, and walking. Claimant said that she could probably perform office-type work if she did not have to sit for too long or walk too far. She said that she had previously performed office work for another employer. There is no appeal of the hearing officer's finding that claimant sustained a lumbar strain in the course and scope of her employment on _____, or of the hearing officer's conclusion that claimant sustained a compensable injury on _____.

Section 401.011(16) defines "disability" as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Claimant had the burden to prove that she had disability as defined by Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The hearing officer found that claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of her injury of _____, from February 15, 1999, through March 16, 1999, and that claimant was not unable to obtain and retain employment at wages equivalent to her preinjury wage as a result of her injury of _____, from March 17, 1999, to the date of the CCH, August 9, 1999. The hearing officer concluded that claimant had disability from a compensable injury of _____, from February 15, 1999, through March 16, 1999. Claimant contends that the evidence shows that she had disability from February 15, 1999, through the date of the CCH and that the hearing officer's decision on the disability issue is against the great weight of the evidence.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. The weight to be given to the claimant's testimony and medical reports was for the hearing officer to determine. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision on the disability issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge