APPEAL NO. 992045

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 25, 1999. The single issue at the CCH was whether the respondent (claimant) had disability resulting from the injury sustained on _____. The hearing officer determined that the claimant had disability from August 21, 1998, through May 19, 1999, the period claimed. The appellant (carrier) appeals, urging that the claimant did not sustain her burden of proving disability and that the hearing officer's finding of disability is against the great weight and preponderance of the evidence. No response is on file.

DECISION

Affirmed.

The claimant, a ballet dancer, sustained a compensable low back injury on _____, as stipulated by the parties. The evidence showed that she had a workers' compensation low back injury in 1995, including a loss of disc space, and had been under intermittent treatment although she continued dancing. Following the _____, injury (apparently of an aggravation nature), the claimant continued dancing until the end of the particular season which ended on May 24, 1998. On May 28, 1998, she signed a contract indicating an intent to dance the next season beginning in August 1998 and ending May 19, 1999. Subsequently, she had a 10-week pregnancy miscarriage in July 1998, and informed her employer that due to her physical and emotional state, she would like to continue her leave of absence from performing during the upcoming season. She stated that it was usual practice when she filed and received unemployment insurance at the end of the season in May 1998. Starting in August 1998, she began teaching limited classes at several locations not earning her average weekly wage and she did not dance professionally. She states her back condition had worsened and that one of her doctors, Dr. B, took her off work because of her back on August 21, 1998. The claimant had also been treating with a chiropractor, Dr. E.

In a series of notes from Dr. B, he indicates that the claimant was taken off work as of August 21, 1998; that the injury in _____ was one of "a sequence of injuries, all of which contributed to her difficulty"; and that the claimant is unable to return to dancing because of her back (described as a spondylosis, primarily at the L4-5 level) and is disabled from dancing professionally. Dr. E states in a June 1, 1999, note that the _____, injury was separate and apart from any other and that it was, in his opinion, "[t]he final insult which would effectively and finally prevent the patient from returning to professional dancing."

Based upon this evidence, the hearing officer found and concluded that the claimant had disability from August 21, 1998, through May 19, 1999, the claimed period. While it is

clear that the claimant had a back injury going back to 1995 with ongoing intermittent treatment, she was able to continue her dancing career. The parties stipulated that there was a compensable low back injury sustained in _____. Although the claimant finished the season, there is evidence that her low back condition worsened and that she was taken off work as a professional dancer. While there is evidence of other additional matters, including the miscarriage and the leave of absence therefor, this presented a question of fact for the hearing officer to resolve as to whether the agreed injury of _____, was a cause of the disability as defined in Section 401.011(16) beginning on August 21, 1998. The claimant's testimony, which was apparently believed by the hearing officer (Section 410.165(a)), together with the medical evidence provided by the notes from Dr. B and Dr. E, provided a sufficient evidentiary basis for the finding and conclusion reached. While some evidence supported different inferences, this is not a basis to reverse the determination of the fact finding hearing officer. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Having reviewed the evidence of record, we cannot conclude that the determinations of the hearing officer 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). Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Susan M. Kelley
Appeals Judge