APPEAL NO. 992073

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 17, 1999. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) did not have disability as a result of the injury of (current date of injury). The claimant appeals, urging that the hearing officer's decision should be reversed and a new decision rendered based on the great weight of the medical evidence that the claimant suffered disability from (current date of injury), to the present. The respondent (carrier) replies that the claimant has not perfected his appeal because he has only appealed stipulated findings of fact and that the findings of fact and decision of the hearing officer are clearly supported by the great weight of the evidence.

DECISION

Affirmed.

The carrier contends that the claimant's request for review was not adequate; that the claimant did not appeal any of the findings of fact, except those stipulated; and that the claimant has not perfected an appeal on the findings of fact which pertain to disability. The claimant's appeal does incorrectly reference December 24, 1999, as the date of injury and does not refer to the correct employer; however, there is no indication that the claimant is disputing stipulated findings of fact. The claimant's appeal states in pertinent part: "Appellant respectfully requests this panel to: 1. Reverse the decision of the hearing officer and render a new decision based on the great weight of medical evidence that he suffered disability as a result of his accident from (current date of injury) to the present." Section 410.202(c) provides that "[a] request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought." The Appeals Panel has read this requirement broadly, particularly in cases involving an unrepresented claimant where it is relatively evident what issues the claimant is appealing. Texas Workers' Compensation Commission Appeal No. 960775, decided July 18, 1996 (Unpublished). While we would not customarily expect to see such a general appeal from a represented claimant, as is the case here, we have held that appeals which lack specificity will be treated as challenges to the sufficiency of the evidence, even those where the claimant was represented. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We find that the appeal is adequate in the present case to invoke our jurisdiction and raise the issue of whether there was sufficient evidence to support the hearing officer's decision.

The claimant testified that he worked for employer for almost 33 years; that he decided to retire in September 1998 and filed papers with a scheduled retirement date of January 31, 1999; that his job was as an auto shop maintenance helper; that he injured his back and neck on (current date of injury), when he was jerked backwards while working

with a suction hose; that he sought medical treatment with Dr. B in December 1998; that he continued working after the injury through the end of December 1998; that after Dr. B ran a cervical MRI he told the claimant that he should work light duty; that the day he reported to work light duty he was sent to perform his regular job because there was no one trained to do his job; that he continued working and trained someone to perform his job until he took vacation in early January 1999; that he took vacation until he retired on January 31, 1999; that he had plans after retirement to start a business hauling cars and trucks with a friend; that from January 31, 1999, to the date of the CCH, Dr. B said that he could not work because of an impingement in his vertebra; and that the injury has prevented him from working at his planned business enterprise. It was the claimant's position that he had disability after January 31, 1999, from February 1, 1999, through the date of the CCH. The carrier contended that the claimant voluntarily removed himself from the workforce by retiring, that his intention to perform work while retired did not establish disability, and that he has not established he was unable to obtain and retain employment at the preinjury wage because of the compensable injury.

The medical records from Dr. B indicate that on January 30, 1999, the claimant was released to limited work, no heavy work. A cervical MRI taken on January 4, 1999, indicates that the claimant has a small central disc protrusion at C5-6 impinging on the anterior thecal sac and anterior cervical cord and moderate changes of disc dessication. On February 11, 1999, Dr. B indicates that the claimant was unable to work from January 1, 1999, until the present. On February 25, 1999, Dr. B indicates that the claimant was unable to work for four to six weeks. Dr. B, on March 29, 1999, states "I would have kept this patient off work for at least three to four months and then allowed him to go back to light duty for another three or four months after that." In justifying why he would have kept the claimant off work for three months or so postinjury, Dr. B states that the claimant has degenerative disc disease with an impingement on the spinal cord and keeping him off work would prevent inflammation, decrease the swelling of the spinal structures, and avoid the possibility of surgery in the future.

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." The claimant had the burden of proving disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. Whether disability exists is generally a question of fact and can be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The fact that a claimant retires does not automatically preclude a finding of disability. Retirement is a factor for the hearing officer to consider in evaluating whether a claimant meets the statutory definition of disability, but the retirement from the job where a claimant was injured does not as a matter of law end disability. Texas Workers' Compensation Commission Appeal No. 970089, decided February 28, 1997. Rather, a claimant need only prove that the compensable injury is a cause, not necessarily the only cause, of the inability to earn the preinjury wage. In Texas Workers' Compensation Commission Appeal No. 94905, decided August 26, 1994, the claimant's intent was to retire, travel, and seek part-

time employment to supplement her retirement. She sustained a compensable injury on (1st date of injury); was released to do light duty; worked in a lighter capacity in her department pending retirement; and retired effective May 30, 1992. The hearing officer determined that the claimant did not have disability after she retired on May 30, 1992, and the Appeals Panel affirmed that determination.

The hearing officer considered the evidence and made the following Findings of Fact:

FINDINGS OF FACT

2. Claimant continued working after the injury of (current date of injury) until he took vacation.

3. Claimant worked under a light duty program but actually performed his regular duties until he left Employer.

4. Claimant was given a light duty release on December 30, 1998.

5. Employer would have made light duty available to Claimant at all times subsequent to December 30, 1998.

6. Claimant was capable of performing his regular duties at all times subsequent to (current date of injury).

7. Claimant was able to obtain and retain employment at wages equivalent to his preinjury average weekly wage at all times subsequent to (current date of injury).

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer applied the correct legal standard, did not find the claimant credible in his assertions that he was unable to obtain and retain employment at wages equivalent to his preinjury wage after (current date of injury), and concluded that the claimant did not have disability as a result of the injury on (current date of injury). 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 could 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are

so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence to be sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Judy L. Stephens
Appeals Judge