APPEAL NO. 000354

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 January 27, 2000. The hearing officer determined that respondent (claimant) had disability from October 16, 1999, to the present due to his _____, compensable wrist injury. Appellant (carrier) appealed this determination on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant had disability from October 16, 1999, to the date of the CCH. Claimant had the burden to prove that he had disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability may be established by the injured worker's testimony if the hearing officer finds that testimony credible. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Medical evidence is not required to prove disability. Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992. A conditional or light-duty release is evidence that disability continues and a claimant under a light-duty release does not have the obligation to look for work or to show that work was not available. *See* Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant testified that he was working as a "billet spotter" for his employer until he was laid off on October 15, 1999. He said he had continued to work until October 15, 1999, after his compensable wrist injury doing light-duty work under a light-duty release. Claimant said he had been working fewer hours after his injury and received partial temporary income benefits (TIBS) of about $12.00 per week because he earned less money. Claimant said he does not have full use of his right hand due to his compensable injury. He said he has not earned wages or tried to get another job since his layoff because he cannot work. Claimant testified that he approached the Texas Workforce Commission

about unemployment benefits, but he was unable to certify that he was able to go to work. Claimant testified that he would still be working light duty if not for his layoff in October 1999. Claimant said he underwent surgery for his wrist injury on December 6, 1999.

In an August 1999 note, Dr.M stated that claimant may return to light-duty work but that he may not use his right hand. In a September 21, 1999, note, Dr. M stated that claimant may do light-duty work with no lifting, pushing, or pulling with his right hand. In a November 18, 1999, report, Dr. H stated that: (1) claimant has right wrist pain after a traumatic injury; (2) claimant's condition is worse; (3) claimant has a suspected triangular fibrocartilage tear; (4) claimant is about to have surgery on his wrist; and (5) claimant is capable of light-duty work only.

Carrier asserts that the hearing officer should have discounted claimant's medical evidence, but did not explain the reasoning behind this argument. Additionally, the fact that claimant would have continued working light duty for employer had he not been laid off does not mean that his disability cannot continue after the layoff, especially considering the fact that claimant was under a conditional work release. There was no issue of bona fide offer of employment raised or litigated in this case. The hearing officer could credit the evidence that claimant's employment was terminated after a reduction in force and that claimant was under a continuing light-duty release after his August 1999 injury. Claimant said he was under a continuing light-duty restriction at the time of the layoff. The hearing officer could consider all the evidence and determine that claimant had disability from October 16, 1999, to the date of the CCH. We conclude that her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier appears to contend that the hearing officer abused her discretion in excluding evidence regarding the reasons why claimant did not look for work after his layoff. Carrier contended that the reason why claimant was not looking for work or working was that he did not want his wages garnished for child support. It complains that the hearing officer would not permit cross-examination of claimant on this issue. The hearing officer sustained claimant's relevance objection to this line of questioning and noted that: (1) even if claimant succeeded in obtaining TIBS, claimant's TIBS could be garnished for child support; and (2) claimant did not quit his job to allegedly avoid such garnishment; instead, he was laid off. The hearing officer apparently considered the fact that there could be garnishment of claimant's wages if he worked, or garnishment of his TIBS if he did not work, and decided that the evidence was not relevant, particularly in light of the fact that claimant did not voluntarily terminate his employment. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). After reviewing the evidence in this case,

we conclude that any possible error in excluding evidence in this case was not reasonably calculated to cause, nor did it probably cause, the rendition of an improper judgment. We perceive no reversible error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge