

APPEAL NO. 000395

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 20, 2000. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) did not have disability as a result of her _____, compensable injury from July 2, 1999, through the date of the hearing. In her appeal, the claimant essentially argues that the hearing officer's disability determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer's decision contains a detailed factual summary that will only be briefly summarized here. The parties stipulated that the claimant sustained a compensable injury on _____, in the course and scope of her employment as a tool room attendant for the employer and that the claimant did not have disability and was not entitled to temporary income benefits for the period from January 25, 1999, to July 1, 1999. The claimant testified that she worked light duty in the tool room following her compensable injury until February 16, 1999, when she was terminated, following a fight she had at work with her boyfriend, Mr. R. The claimant acknowledged that she could have continued in a light-duty position with the employer had she not been terminated; however, she maintained that she was not physically capable of performing the full duties of her job in the tool room and that she is still not physically capable of performing those duties. She stated that she had not worked since her termination except for a one to two-month period in May 1999 when she worked as a waitress in a bar. She stated that she did not have to perform any heavy work at the bar and that she worked limited hours. In addition, she stated that she had to quit the job as a waitress because of her back pain.

The claimant's treating doctor is Dr. G, a chiropractor. In a September 20, 1999, report, Dr. G stated that the claimant "remains off work at his direction" and that she has "severe low back pain which interfere [sic] with her activities of daily living and sleep." Dr. G concluded that her prognosis is "undetermined" and that a referral for "an orthopedic consult, discogram, etc. may be necessary in the near future." In a July 26, 1999, report, Dr. G stated that the claimant should "restrict her activities of daily living and avoid any work requiring heavy physical exertion" On July 29, 1999, the claimant had a lumbar MRI which revealed a "small 2mm disc bulge at L4-5 with a questionable annular tear. Spinal canal narrowing by facet hypertrophy and disc bulge. Minimal neural foramen narrowing."

Mr. B testified by telephone at the hearing. Mr. B stated that he is a safety supervisor for the employer and that he witnessed the fight between the claimant and Mr.

R, which resulted in her termination. Mr. B testified that the fight was "fairly violent"; that she threw her hard hat and wrench at Mr. B and that he in turn threw them back at her; that the wrench hit the claimant in the back; and that during the altercation, the claimant did not appear to have any physical limitations and did not appear to be in any pain. In addition, Mr. B testified that he saw the claimant work in the period from _____, until the date of her termination and that with the exception of the first couple of days after the injury, the claimant did not appear to have any difficulty performing her job duties. Contrary to the claimant's assertions, Mr. B testified that the claimant worked light duty in the office for the first day after her injury and that thereafter, she returned to the tool room performing her regular duties. The carrier also introduced several recorded statements from coworkers who confirmed that the claimant returned to full-duty in the tool room following her injury and that about three days after her termination, the claimant was seen dancing in a bar.

The claimant has the burden to prove that she had disability as a result of her compensable injury. That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, questions of injury and disability can be established based on the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the hearing officer need not accept the testimony of the claimant at face value; rather, it only raises an issue of fact for the hearing officer to resolve. Campos, supra; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

The claimant asserts error in the hearing officer's determination that she did not have disability for the period from July 2, 1999, through the date of the hearing. The claimant also appealed the stipulation that she did not have disability for the period from January 25, 1999, through the date of the first hearing on her claim, July 1, 1999. As noted, the claimant stipulated that she did not have disability in that period. In addition, we note that in Texas Workers' Compensation Commission Appeal No. 991595, decided September 9, 1999 (Unpublished), we affirmed the decision of another hearing officer that the claimant did not have disability as a result of her _____, compensable injury for the period from January 25 to July 1, 1999. We find no merit in the assertion that the hearing officer erred in determining that the claimant did not have disability as a result of her compensable injury for the period from July 2, 1999, through the date of the hearing. There was conflicting evidence on the issue of disability. The claimant maintained that she worked in a light-duty position following her injury until her termination and that thereafter she was taken off work by Dr. G. However, Mr. B testified, and the statements of several of the claimant's coworkers confirmed, that the claimant performed her regular duties

following her injury, except for the first day after her injury. As the fact finder, the hearing officer was free to give more weight to the evidence suggesting that the claimant's injury did not prevent her from performing her regular duties and to determine that, as a result, the claimant did not have disability within the meaning of the 1989 Act for the period at issue. Nothing in our review of the record demonstrates that the hearing officer's disability determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge