

APPEAL NO. 000397

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 27, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and that the claimant did not have disability as a result of the injuries sustained on \_\_\_\_\_. Claimant appeals the disability determination on sufficiency grounds. Respondent (carrier) responds that the hearing officer correctly determined that claimant did not have disability.

DECISION

We affirm.

We note that in its response, carrier complained that the evidence shows that claimant did not sustain a compensable injury. The response was not timely as an appeal and we will not address it as such. The determination that claimant sustained a compensable injury has become final.

Claimant contends the hearing officer erred in determining that he did not have disability. Claimant contends that: (1) Dr. A took claimant off work, released him to light duty in April 1999, and took him off work again until he issued a full-duty release in June 1999; (2) the hearing officer did not give a basis for rejecting Dr. A's medical reports; (3) there is no credible evidence contrary to claimant's evidence about disability; (4) the hearing officer is not qualified to consider whether claimant was able to earn his preinjury wage; and (5) the hearing officer misconstrued the evidence about his current employment.

The applicable law regarding disability and our appellate standard of review are stated in Texas Workers' Compensation Commission Appeal No. 000032, decided February 18, 2000; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995; and Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995.

The hearing officer's decision sets forth fairly and adequately the evidence in this case and it will only be outlined here. Briefly, claimant testified that a robber came into the store where he was working on \_\_\_\_\_, pulled a gun, and "knocked him" and "poked" him with the gun. Claimant said he eventually ran outside, but that as he did so, he broke the latch on the glass doors that the robber had locked, and hit his face as he went through the doors. Claimant said he felt immediate pain after the incident, but did not go to the hospital. He testified that he first sought medical care five days later at a medical center. Medical notes state that claimant said he was punched and that he hit his head on a window. Claimant was treated for pain and contusions. Claimant later saw Dr. A, who took him off work for two weeks. Claimant said Dr. A returned him to light duty at one point, that

he tried to do light-duty work, but that Dr. A took him back off work until June 1999 when he released claimant to full duty. Claimant said he is better and that he returned to work in June 1999 as a chef cooking meats brought to him by helpers. In a January 25, 2000, medical note, Dr. A stated that claimant complained of, among other things, chipped teeth, pain in his neck, upper back, ribs, and knee. Dr. A diagnosed a cervical sprain, lumbar sprain, knee contusion, and "CHI."

Whether claimant had disability was a fact issue for the hearing officer. The hearing officer heard claimant's testimony, reviewed the medical evidence and decided what facts the evidence established. The hearing officer determined that claimant did not meet his burden to prove that he was unable, because of his compensable injury, to obtain and retain employment at wages equivalent to his preinjury wage. Section 401.011(16). He was the sole judge of the credibility of the evidence. All of claimant's assertions concern credibility determinations that are the sole province of the hearing officer. The hearing officer was required to determine the issue of disability in this case. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy L. Stephens  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Alan C. Ernst  
Appeals Judge