APPEAL NO. 000401

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 appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____, and that he was incarcerated from (date), through (date), and was not entitled to temporary income benefits for that period. The hearing officer determined that the claimant had disability from _____, until (date), and from (date), through the date of the CCH and that the employer did not tender a bona fide offer of employment to the claimant. The carrier appealed, urged that the evidence is not sufficient to support the determinations of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urged that the decision of the hearing officer is not so contrary to the great weight of the evidence as to be clearly wrong and unjust, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant worked for a temporary service; normally worked about three days a week; had a prior low back injury; injured his low back picking up a heavy object at a construction site; that day went to a doctor, was diagnosed with a low back strain, and was released to return to work with no lifting over 50 pounds; and told a supervisor that his back hurt too much to work that day, went to another doctor and was taken off work, and in January 2000 was released by a third doctor to return to work with no lifting over 20 pounds and no frequent bending, stooping, or twisting.

The temporary service sent the claimant a letter dated May 20, 1999, that states that it is aware of the limitation of no lifting over 50 pounds; that it will abide by the limitation; that it had positions available in concessions at a zoo, in concessions at a stadium, and in a production line labeling cans; that the work hours are Monday through Friday from 8:00 a.m. to 5:00 p.m.; that the rate of pay is $6.00 per hour; that the claimant was to report to work on Monday, May 24, 1999; and that the offer of employment would remain open for one week. The claimant testified that he called the temporary service on May 22, 1999; that he was told that the three positions were no longer available and the offer was no longer in effect. Mr. F, the area manager for the temporary service, testified that he orally made the claimant the offer to return to work at the construction site; that the claimant said that he was still hurting and was looking for light duty; that before he was injured, the claimant came in five days a week and worked about three days a week; that workers should arrive about 5:30 or 6:00 a.m. to be placed on a job for that day; and that if the claimant would have come in early each morning after his injury, he would have been placed in a light-duty job if one was available.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5) is entitled Bona Fide Offers of Employment, states that a written offer shall be presumed to be bona fide if the offer clearly states certain things, and lists things that shall be considered in determining whether an offer is bona fide. The evidence does not indicate the expected duration of the position offered, the duties of the position, the maximum physical requirements of the job, or the location of the job. There is evidence that the jobs were not available two days after the offer was made and that the offer was not kept open for one week as indicated in the letter.

The testimony of the claimant alone may be sufficient to establish disability. Texas Workers' Compensation Commission Appeal No. 91023, decided October 16, 1991. When a claimant receives a release to light duty with restrictions, that claimant does not have a requirement to seek employment, and disability does not end in the absence of a showing that employment within the restrictions was reasonably available. For much of the time that the hearing officer determined that the claimant had disability, a doctor had him in a no-work status. For other times, the claimant was released to light duty with restrictions.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge