

APPEAL NO. 000451

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 February 8, 2000. The hearing officer determined that the respondent (claimant) had disability beginning on September 22, 1999, and continuing through the date of the CCH as a result of his compensable injury. Appellant (carrier) appeals this determination on sufficiency grounds. The file does not contain a response from the claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant had disability from July 8, 1999, to the date of the CCH. Carrier asserts that: (1) the reason claimant was off work was because of a termination for cause; (2) the opinion of Dr. G that claimant should be off work is not based on accurate facts; and (3) claimant had been able to work after a full-duty release and had told a physical therapist that he had no pain, which shows that he was able to work full duty.

Claimant testified that he injured his low back at work on _____, while pulling a roll of foam rubber across the floor. He said he went home and when he did not improve, he went to the emergency room. Claimant said he brought an off-work slip back to work and he was directed to a clinic to see the "company doctor." Claimant testified that he was released to do light-duty work and that his employer gave him sedentary work to do. Claimant testified that he was released to full duty on August 20, 1999; that he went back to work; that he was having problems with his back; and that he went to try to change treating doctors. Claimant said that on August 27, 1999, he asked a manager about a check and his time cards and his employment was suspended for using profanity. Claimant said he did not quit. Claimant later received a letter from employer stating that he had quit his job.

Claimant said that when he tried to see Dr. G, he was told that he would not be treated until he obtained approval for the change in treating doctors. Claimant indicated that the Texas Workers' Compensation Commission approved the request and he then began treating with Dr. G on September 22, 1999. Claimant said he has continued to have problems with his back. Medical reports indicate that claimant later underwent MRI testing and epidural steroid injections.

The record contains off-work slips from Dr. G and the first one is dated September 22, 1999. A nerve conduction study report from Dr. W states that nerve conduction velocities were reduced and that the "impression" was "L5-S1 radiculopathy." In a November 8, 1999, report, Dr. H stated under "impression" that claimant has a "3mm protrusion and annular tear." Dr. H noted that claimant said his symptoms never improved after his injury.

The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. Termination for cause does not necessarily preclude a finding of disability. Texas Workers' Compensation Commission Appeal No. 92282, decided August 12, 1992. Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The medical evidence, off-work slips, and claimant's testimony support the hearing officer's disability determination. The matters emphasized by carrier were for the hearing officer to consider in making his determinations 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge