

APPEAL NO. 000522

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). On February 16, 2000, a hearing was held. The hearing officer determined that appellant (claimant) had disability from October 19 to October 28, 1998, based on his compensable injury of _____. Claimant asserts that a determination that he was terminated for cause was against the great weight of the evidence; he also states that he has been unable to obtain and retain employment since July 28, 1999. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) as a general manager. On _____, claimant injured his back when he was helping to move a filing cabinet. He saw Dr. O on October 19, 1998; Dr. O noted, "twisted back," called for an MRI, diagnosed a lumbar strain/sprain, and took claimant off work "until further notice." According to claimant, Dr. O allowed him to return to work light duty on October 27, 1998. There is no dispute that claimant returned to work on October 28, 1998, and performed his job without disability until July 28, 1999. Dr. O stated in a Report of Medical Evaluation (TWCC-69) that claimant reached maximum medical improvement (MMI) on November 20, 1998, with a zero percent impairment rating.

The record indicates that claimant received a written warning concerning answering pages on April 13, 1999; he received another written warning on April 19, 1999, concerning pages, customer relations, and missing equipment. On July 13, 1999, claimant received a warning notice for failure to keep in contact with the home office. Claimant was to report to the employer's (city) office before 9:00 a.m. on July 15th. He did not do so. A memo indicates that claimant was paged all day July 22, 1999, without answer. Claimant was seeking medical care that day for an anxiety attack. On July 23, 1999, claimant was placed on a leave of absence. In the afternoon of July 23, 1999, a request for an MRI was received from claimant's doctor in regard to the workers' compensation claim. Another memo indicates that claimant was scheduled to meet with the owner, Mr. C, at 9:00 a.m. on July 26, 1999, but did not appear. A July 27th note indicates that claimant's pager was observed to have certain "numbers in it" indicative that claimant had received certain pages not answered. On July 28, 1999, claimant was discharged.

Claimant testified that medications he received for his injured back interfered with his work from October 28, 1998, to July 28, 1999. He also said that he worked in pain during that period of time. Mr. M testified that he is operations coordinator for employer. He supervised claimant and said that from October 28, 1998, to July 1999, he never observed claimant as not being able to do his job; Mr. M also said that he did not recall claimant ever complaining about his back.

Dr. O's records show, also, that claimant had previously hurt his back on _____, at work; Dr. O diagnosed a lumbar strain with radiculopathy at that time. Prior to that occasion, claimant had been seen for gout and was prescribed Darvocet and other drugs which he continued to receive during the period of October 28, 1998, to July 28, 1999. On July 22, 1999, the day before employer received the call from Dr. O's office about an MRI for the back, claimant had seen Dr. O for back pain, dyspnea, anxiety, and stress. In December 1999, Dr. O said that claimant has not reached MMI (he had stated in November 1998 that MMI was reached).

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. In determining whether claimant had disability after July 28, 1999, the hearing officer could consider that claimant was able to work for nine months after the injury. He could consider that claimant's medical records showed a strain/sprain on _____, but that other medical records showed at least one previous strain with radiculopathy. The hearing officer commented in his Statement of Evidence and Discussion that claimant was not persuasive concerning the effect which medication, said to be for his back injury, had on him during late 1998 and 1999. The hearing officer also stated that Dr. O's taking claimant off work after the July 22, 1999, visit was "not persuasive." The hearing officer, as fact finder, may assign weight to any evidence, including claimant's testimony and Dr. O's status reports. The other evidence of record was not inconsistent with the hearing officer's determinations that neither claimant, in regard to the effect of medication, nor Dr. O, in saying that claimant could not work in July 1999 because of his back injury, were persuasive.

Similarly, the hearing officer could determine that various warnings given to claimant relative to his job were not based on the workers' compensation injury for which Dr. O had concluded that claimant had reached MMI in November 1998. The evidence, as summarized herein and set forth in the record, was sufficient to support the finding of fact that claimant was terminated for cause on July 28, 1999. Claimant's testimony, the medical records, and other evidence sufficiently supported the determination that claimant had disability from October 19, 1998, just after the injury of _____, to October 28, 1998, when claimant obtained a light-duty release and returned to his regular duties as a general manager, but that claimant did not have disability at any time thereafter.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge