

APPEAL NO. 000550

This appeal is brought 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 28, 2000. The hearing officer determined that as a result of the compensable injury sustained on _____, the respondent (claimant) had disability beginning on October 5, 1999, and continuing through the date of the CCH. The appellant (carrier) requested review, urged that the hearing officer erred in determining that the claimant had disability, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not have disability. The claimant responded, stated that she agreed with the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The response of the claimant contains comments and documents that are not in the record of the CCH held on February 28, 2000, and will not be considered. The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary will be contained in this decision. The claimant testified that she has emotional problems because of the pain she has as a result of the compensable injury and because of difficulty dealing with the carrier and that she is unable to work because of her physical condition resulting from the compensable injury and her emotional problems. After the October 4, 1999, CCH, Dr. M, a chiropractor, reported that the claimant was unable to work because of the injuries she sustained. A report of a functional capacity evaluation (FCE) dated December 15, 1999, states that the claimant was cooperative during testing, that activity tolerance was limited by complaints of pain, that she had emotional problems during the testing, and that her capabilities did not match any job description as defined by the Department of Labor's Dictionary of Occupational Titles. In a report dated January 17, 2000, Dr. JS reviewed the history of the claimant-s injury, complaints, and treatment; stated that her physical problems were the least of her concern and that her emotional stability, depression, and feelings of inadequacy were at the forefront; recommended de-emphasizing the physical complaints and concentrating on the psychological and emotional portion of her current condition; and opined that she needed supportive therapy and possibly even psychotropic medication and continued and persistent counseling to help her try to gain some insight and deal with the problems she was currently experiencing. Dr. WS examined the claimant at the request of the carrier. In a report dated January 14, 2000, Dr. WS provided a history of the claimant-s injury; reported that the claimant said she was essentially refusing to do any type of meaningful FCE, had already performed an FCE that she was happy with, and would sue whoever performed an FCE; and opined that the claimant could return to work with lifting restrictions in the report of an FCE dated January 15, 1999.

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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The carrier argued that the Appeals Panel had affirmed a decision of a hearing officer that the claimant did not have disability because of this compensable injury through October 4, 1999; that essentially the claimant's condition had not changed; and that she could not have disability. In the case before us, the record contains medical reports dated after the October 1999 CCH. The hearing officer considered them and stated that he did not find the report of Dr. M to be very credible, but that he found the December 1999 FCE and the January 2000 report of Dr. JS to be more credible and concluded:

Claimant had disability resulting from the compensable injury, together with unrelated medical problems and other emotional and psychological problems, beginning on October 5, 1999 and continuing through the date of the hearing in this matter.

An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant had disability beginning October 5, 1999, and continuing through the date of the CCH is 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:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge