APPEAL NO. 000944

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 February 7, 2000. The record closed on April 3, 2000. The hearing officer determined that the appellant (claimant) has not experienced disability as defined by the Texas Labor Code as a result of the injury of _____ (all dates are 1999 unless otherwise noted). The claimant appealed, contending that her injury was a "producing cause" of her disability based on her testimony and the medical evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a "packer" putting parts in boxes. Claimant testified that on _____, as she was lifting a plastic bag, she felt pain in her lower back. The parties stipulated that carrier had not disputed the claimed injury. Claimant continued working in her regular job. Apparently, some time in July, claimant sustained a claimed wrist injury (not at issue here). Claimant was seen by Dr. L at the (clinic) on July 19th for both her wrist and her back injury, but continued to work as a packer until she was terminated on September 3rd. Claimant subsequently sought treatment from Dr. D. A lumbar MRI ordered by Dr. D was performed on September 29th. The MRI had an impression of a moderate disc bulge at L5-S1, without canal stenosis, and mild degenerative disc disease at L3-4 through L5-S1. Dr. D took claimant off work on October 1st. Apparently, Dr. F was appointed as the designated doctor for claimant's low back injury. Dr. F certified maximum medical improvement (MMI) on November 19th with an eight percent impairment rating. Claimant asserts disability from October 1st when Dr. D took her off work until November 19th when Dr. F certified MMI. Dr. D released claimant to return to modified work on February 11, 2000.

The medical evidence is fairly sparse. Dr. L's report of July 19th deals primarily with the right upper extremity, although it does mention medication "for the back injury." Claimant was given physical therapy, apparently for both her back and her wrist. Dr. F's comprehensive report of November 19th, while referencing claimant's back condition, does not directly comment on claimant's ability to obtain and retain employment.

The hearing officer found that claimant had been able to work her regular duties until she was terminated, that claimant "was not a credible witness" and that Dr. F's November 19th report showed positive Waddell's signs. Claimant appeals, asserting the documentary evidence and her testimony show that her compensable back injury was "a producing cause of [her] disability." Claimant also cites Dr. F's report where Dr. F recites findings from a functional capacity evaluation (FCE) where the FCE "evaluator did not assess her as being able to meet the physical demands of her previous position."

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. When an employee sustains a compensable injury and returns to work with the employer and then is terminated by the employer, the hearing officer may consider the cause of the termination. Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. If the termination was for cause, the employee must establish her disability after the termination by credible evidence. *Id.*

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer considered the evidence, including the fact that claimant continued to work her regular duties until she was terminated.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge