APPEAL NO. 000973

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 March 7, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, to his thoracic spine was not a producing cause of bilateral carpal tunnel syndrome (CTS), of cervical strain, and of lumbar strain and that the claimant did not have disability from February 19 through July 30, 1999, as a result of his compensable injury. The claimant appealed these determinations, expressing his disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. A further determination that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change of treating doctors to Dr. W has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked for an employee leasing organization. He was hired to work at a job location as a general laborer. After two days on this job, he was told to carry some lumber. In doing so, he said, he felt a "tear" in his mid-back. At another point he said he felt pain from the top of his back to the bottom. He received initial medical care from a clinic. The diagnosis included thoracic strain. No mention is made of complaints of lumbar or cervical pain or of bilateral wrist/hand pain. The carrier has accepted liability for a thoracic spine strain injury. Claimant apparently returned to light duty. Beginning December 7, 1998, the claimant received treatment from Dr. F who also diagnosed a thoracic muscle strain. Although neither Dr. F's nor the clinic's reports reflect complaints beyond the mid-back, the claimant said he reported low and upper back pain and tingling in his hands. On February 8, 1999, Dr. F released the claimant to return to work the next day without restrictions. The claimant said he disagreed with Dr. F about this, went directly to the Commission's office and requested to change treating doctors to Dr. W.

At the claimant's first visit with Dr. W on February 17, 1999, Dr. W found his examination consistent with right CTS and cervical tenderness with decreased range of motion. He was placed in an off-work status. A cervical MRI on August 11, 1999, showed disc degeneration and narrowing. On July 30, 1999, Dr. W wrote that he felt the claimant had a cervical and lumbar strain as part of his work-related injury. In a report of September 10, 1999, Dr. W wrote that because his symptoms of bilateral CTS appeared after _____, the bilateral CTS "would be related" to the injury. Other medical evidence included the report of Dr. H, a required medical examination doctor, who examined the claimant on May 3, 1999, and concluded that the "only area of symptomatology" was the thoracic spine and that "[n]one of these other symptoms that have been confusing are related." He specifically found "no pathology in the cervical or lumbar areas that should be attributed to the injury at this time." In a report of June 25, 1999, Dr. S, the designated doctor, wrote that the cervical spine was part of the injury and that right CTS was "an

incidental finding" and "[c]ertainly one month of work carrying boards, etc, did not bring about the carpal tunnel compromise."[1]

The claimant had the burden of proving that his compensable injury of _____, included the lumbar and cervical spine and bilateral CTS. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact for the hearing officer to decide. In this case, the hearing officer considered the evidence and concluded that the claimant did not meet his burden of proof of the extent of his compensable injury. In his appeal, the claimant argues essentially that the evidence of Dr. W established the extent of his injury and that Dr. W was more credible in this regard than the other doctors. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In determining what facts have been established, the hearing officer can accept or reject in whole or in part any of the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The evidence in this case was subject to different inferences. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the extent-of-injury determination.

As to disability, the evidence was sketchy at best. Apparently, the carrier acknowledged the claimant had disability for some period of time up to Dr. F's unrestricted duty release. Also, the carrier seems to have accepted disability after July 30, 1999, for reasons not made clear on the record. In any case, the claimant testified to disability from his thoracic injury during the period of February 19 and July 30, 1999, and Dr. W supported this view. The hearing officer found the opinion of Dr. F releasing the claimant to return to work without restriction more persuasive than that of Dr. W or the claimant for this period of time. Also, it was apparent from the discussion of issues that the hearing officer was considering only this period because that was the way the issue was framed, the implication being that disability after July 30, 1999, was not an issue before him and would remain an open question. The claimant argued on appeal the straightforward proposition that he had disability before and after this period, so what happened to preclude disability during this period? The most direct answer is Dr. F's full-duty release. We also observe that disability need not be a continuing status, but there may be recurring periods of disability between periods of no disability. *See* Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. Whether disability exists for any period of time is a question of fact for the hearing officer to decide. Under our standard of review of factual determinations of hearing officers, we find the evidence sufficient to support the disability determination in this case.

[1]As noted above, the claimant was apparently only on this job two days.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge