

APPEAL NO. 001003

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 April 17, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) had disability as a result of his compensable injury from October 1, 1999, to February 18, 2000, and from March 31, 2000, through the date of the hearing; and that the claimant has not abandoned medical treatment without good cause, justifying the suspension of temporary income benefits (TIBs) under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.4 (Rule 130.4). In its appeal, the appellant (carrier) challenges each of those determinations on evidentiary sufficiency grounds. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The facts in this case are largely undisputed. The claimant sustained a compensable injury to his left knee in the course and scope of his employment as a welder, when his foot became stuck between cement and a piece of plywood and he twisted his knee. An August 6, 1999, MRI of the left knee revealed "markedly deformed medial meniscus with tears involving body and posterior horn, of a complex nature," "one or more loose bodies of torn meniscal tissue is suspected but not delineated with certainty," and a "full thickness tear of anterior cruciate ligament [ACL]." The claimant initially obtained medical treatment with Dr. R, who referred him to Dr. U, an orthopedic surgeon.

At his initial examination of the claimant on August 24, 1999, Dr. U took the claimant off work. On September 8, 1999, Dr. U performed a left ACL reconstruction and a left partial medial meniscectomy. In an off-work slip dated September 10, 1999, Dr. U continued the claimant in an off-work status. On November 2, 1999; November 5, 1999; and November 9, 1999, the claimant missed his appointments with Dr. U. The claimant testified that he missed two of those appointments because he was sick and that he did not have transportation to get to the third appointment. In progress notes of November 30, 1999, Dr. U noted that he was going to fit the claimant with a functional ACL brace to use at all times and released the claimant to light duty with lifting and carrying restrictions of 20 pounds and a prohibition of climbing ladders. On November 30th, Dr. U also stated that the claimant was to return for a follow-up visit in six weeks. The claimant testified that the employer did not have a light-duty position available for him. In his January 11, 2000, progress notes, Dr. U stated that about four weeks before the appointment the claimant was biking as part of his therapy and he developed swelling and "felt some loosening of the knee." Dr. U noted that the brace for the claimant's knee had not been authorized by the carrier. In addition, Dr. U continued the claimant on a light-duty status and opined that the claimant would reach maximum medical improvement and return to full duty in four months. Dr. U's January 13, 2000, progress notes, state that the knee brace finally was authorized.

In January 2000, Dr. U referred the claimant for physical therapy. The claimant acknowledged that he missed therapy appointments on January 26, 27, and 28, 2000. He explained that he missed his therapy appointments because he did not have his knee brace and Dr. U advised him not to continue in therapy without it. Records from the physical therapy clinic provide that the claimant contacted the office and stated that he was unable to attend therapy because of transportation problems. However, those records also refer to the claimant's needing a knee brace to continue his therapy.

The claimant acknowledged that from February 19 to March 30, 2000, he was incarcerated. He stated that he was not able to schedule an appointment with Dr. U after his release from prison until the day after the hearing. However, the carrier introduced a chart note from Dr. U's office stating that the claimant was a "no-show" for an April 6, 2000, appointment. The claimant testified that he was unaware of that appointment and that he did not schedule an appointment with Dr. U for that day.

In a letter dated February 14, 2000, Dr. U stated that the claimant had been "non-compliant" with his therapy and recommended that the claimant would be "best served with a work conditioning program, if we can find the transportation for him." The claimant acknowledged that he was arrested on February 19th and, as such, he did not attend the work hardening program recommended by Dr. U. On March 10, 2000, Dr. U wrote a second letter stating that the claimant had been non-compliant and, thus, he felt the claimant has completed his medical care.

Initially, we will consider the carrier's assertion that it is entitled to suspend TIBs under Rule 130.4 based upon the claimant's abandonment of medical treatment without good cause. The claimant acknowledged that he missed three appointments with Dr. U in November 1999, three physical therapy appointments in January 2000, and work hardening appointments during the period of his incarceration. Thus, the issue on appeal is whether the claimant had good cause for missing those appointments. The claimant testified that he missed two of the three appointments with Dr. U in November 1999 because of illness and the third because of his lack of transportation. He stated that he missed the physical therapy appointments in January 2000 because he did not have the knee brace Dr. U had prescribed and Dr. U advised him to discontinue therapy without it. As noted above, the physical therapy records state that the claimant called in and reported that he was missing those appointments because of transportation problems. Dr. U's records reflect the carrier's delay in authorizing the knee brace; however, they do not reflect that he advised the claimant not to continue therapy without it and indeed he wrote two letters stating that the claimant was non-compliant with therapy. It was a matter for the hearing officer to consider and resolve the conflicts in the evidence concerning the reasons why the claimant missed medical treatment. She chose to credit the claimant's testimony as to the reasons for his missing appointments. As the fact finder, the hearing officer was privileged to do so. Nothing in our review of the record reflects that the hearing officer's determination that the carrier is not entitled to suspend TIBs based upon the claimant's abandonment of medical treatment is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain

v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide us with a basis for disturbing the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The carrier's challenge to the hearing officer's disability determination is largely premised upon the success of its argument that the claimant abandoned medical treatment. Nonetheless, the carrier also contends that sufficient evidence does not support the hearing officer's disability determination. The claimant had the burden to prove that he had disability as a result of his compensable injury. That question presented a question of fact for the hearing officer. Generally, disability can be established by the testimony of the claimant alone if it is believed by the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Pool, *supra*; Cain, *supra*.

The hearing officer determined that the claimant had disability from October 1, 1999, to February 18, 2000, and from March 31, 2000, through the date of the hearing, excluding the period of his incarceration. The claimant testified that he could not work during the periods of disability found by the hearing officer because of the condition of his left knee. Likewise, there is evidence from Dr. U maintaining the claimant on a light-duty status. That evidence provides sufficient evidentiary support for the hearing officer's disability determination and our review of the record does not reveal that the challenged determination is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge