APPEAL NO. 001031

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 4, 2000. The hearing officer determined that the appellant (claimant) did not have disability from October 20, 1999, through the date of the CCH. The claimant appeals on evidentiary sufficiency grounds, contending that the employer has no light duty and he only has a light-duty release from his current treating doctor, Dr. B, and that neither Dr. D nor Dr. G, who had earlier treated his eye injury, reexamined him before determining that he could return to his regular duties. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings and conclusion.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a detailed statement of the evidence. Accordingly, this opinion will mention only so much of the evidence as is necessary to support our decision.

The parties stipulated that claimant sustained a compensable injury on _____, while employed by (employer). Claimant testified that while cleaning hoses at work on _____, a Saturday, he removed a hose to clean it; that the hose still had some pressure in it and a chemical splashed onto his face; that after washing his face he was taken to a clinic where his eyes were washed out and he was given eye drops and medication; that he returned to the clinic on Monday where his eyes were checked and he was released to return to work; that the foreman advised him that he could not work until he was "100%"; that on Wednesday he began treating with Dr. D, an ophthalmologist, who did not return him to work to avoid his eyes being exposed to vapors; and that Dr. D referred him to Dr. G.

Claimant further testified that around October 1, 1999, Ms. H, accompanied him to a visit with Dr. G and to a visit with Dr. D; that Dr. G and Dr. D then felt that he could return to work; that he discontinued treating with Dr. D because Dr. D felt everything was alright despite the fact that his cornea was damaged; and that he saw an attorney who sent him to Dr. B. He stated that Dr. B released him for light duty on October 18, 1999, but that he had no offer of light duty from the employer. Claimant also indicated that he is still treating with Dr. W, to whom he was referred by Dr. B. Claimant, who said he drove himself to the hearing, also stated that he felt he could return to work and that he was not aware at the time that Dr. D released him to return to work.

Ms. H, a nurse case manager for the carrier, testified that she met with claimant on September 21, 1999, and he indicated that his eyes were getting better and he was pleased with his care; that she met with claimant and Dr. D on October 1, 1999; that on October 19, 1999, she met with Dr. G but that claimant missed this meeting due to a family

emergency; that Dr. G then issued a full-duty release based on his September 21, 1999, examination of claimant; that she faxed Dr. G's release to Dr. D; and that she sent the full-duty releases of Dr. D and Dr. G to the employer on October 21, 1999. Ms. H also testified that she advised both Dr. D and Dr. G that the employer had no light duty available.

Dr. G, identified by Dr. B as a specialist in corneal transplantation, reported on October 1, 1999, that based on claimant's last exam, he "should be able to return to normal duty" and that this is to be confirmed by Dr. D.

Dr. D, an ophthalmologist who had referred claimant to Dr. G for a second opinion, issued a return-to-work statement dated October 21, 1999, reflecting that claimant could return to work as of October 19th without restrictions. Dr. D's narrative report of November 30, 1999, indicates that when she first saw claimant on July 6, 1999, his vision was 20/20 in the right eye and 20/50 in the left; that his left eye was worse and the vision in that eye was 20/200 on July 20, 1999; and that claimant's left eye vision improved from 20/200 to 20/50 on October 1, 1999, and looked much better.

The December 27, 1999, report of Dr. B, who apparently is not an ophthalmologist, reflects that claimant's visual acuity is 20/20 in the right eye and 20/30 in the left and describes claimant's work status as light duty with restrictions including no work outside, no exposure to the elements, and no work requiring binocular vision.

Claimant does not appeal findings that he could operate his vehicle in October 1999 and that he believes he currently can return to work. Claimant does dispute findings that there has been little change in the treatment of his compensable injury since transferring to Dr. B; that there has been slight improvement in claimant's vision; that there was no evidence that claimant's change from 20/50 to 20/30 would have affected his ability to return to his regular duties; that there was scant evidence that claimant's eyes were affected by the weather or had a chemical sensitivity; and that there was scant evidence that claimant could not return to work without restrictions after October 20, 1999.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Claimant contends that he met his burden of proving that his disability continued beyond the October 20, 1999, date determined by the hearing officer, asserting that neither Dr. D nor Dr. G reexamined him before issuing their full-duty releases and that Dr. B has released him for work with restrictions.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in 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 Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this

case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). As the fact finder, it was for the hearing officer to consider all the evidence relevant to the duration of claimant's disability and assign whatever weight she felt appropriate to the records and reports of Dr. D, Dr. G, and Dr. B. Further, the Appeals Panel has said that disability can be proven by the testimony of the claimant without the necessity for medical evidence and claimant has not appealed the finding that he believes he can currently return to work. As for Dr. B's report, while the Appeals Panel has said that "a restricted release to work, as opposed to an unrestricted release, is evidence that the effects of the injury remain and disability continues" (Texas Workers' Compensation Commission Appeal No. 92432, decided October 2, 1992), we have not held that a restricted work release must always result in a finding of disability.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Judy L. Stephens
Appeals Judge