APPEAL NO. 001071

This appeal arises 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 March 3, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable cervical strain injury on _____; that the claimant had resulting disability from October 5 through October 19, 1999; and that the claimant's average weekly wage (AWW) is $654.10. The claimant appeals only the disability determination, contending that he had another period of disability beginning January 7, 2000, and continuing through the date of the CCH. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The unappealed findings have become final. Section 410.169.

DECISION

Affirmed.

The claimant was injured on _____, when a pick-up truck backed into him. He said that his supervisor, Mr. H, the driver, convinced him not to report the injury and that he would take care of him. The claimant worked at what he said was light duty until the pain became too severe and he asked to see a doctor on September 29, 1999. On that date, he saw a company doctor. Eventually, he saw Dr. C on October 5, 1999, and was placed in an off-work status until Dr. C released him to full duty without restriction on October 20, 1999. He worked on October 20, 1999. On October 21, 1999, the claimant left this job and shortly thereafter began another job. He said he told a coworker that he could not continue working because of his injury and that he "probably" would take another job. He worked this new job for about two months. He said he did not tell the new employer he had been injured on his previous job. Although he testified that he could no longer perform his new job, he said that he never gave this as the reason why he quit his old job, but instead said he quit to see his son in another city. On January 7, 2000, he went to an emergency room (ER) with complaints of headache, neck and back pain, and tingling in his upper extremities. The claimant contends that he began a new period of disability on this date.

The majority of time at the CCH was devoted to establishing a compensable injury. The hearing officer's finding that the claimant sustained a cervical strain "as a result of the vehicle hitting him on _____" (Finding of Fact No. 12) has not been appealed. The claimant has, however, appealed that portion of Finding of Fact No. 11 that states that Dr. H, who evaluated the claimant on February 9, 2000, "concluded that Claimant's symptoms are consistent with a cervical strain and that Claimant has signs of symptom magnification." He argues that this portion of the finding is against the great weight and preponderance of the evidence. We note that the finding does not find symptom magnification, only that Dr. H believed the claimant had signs of symptom magnification. Such a finding of Dr. H's belief has clear support in Dr. H's report of this visit and we

decline to reverse it on the grounds for reversal alleged. We also note that the hearing officer expressly found that the compensable injury was a cervical strain.

The claimant also argues on appeal that the refusal of the hearing officer to find a new period of disability beginning on January 7, 2000, as requested by the claimant at the CCH is also against the great weight and preponderance of the evidence. In support of this position, the claimant relies on his testimony that he quit his job shortly after returning to it on October 20, 1999, because he could not do the work due to pain from his compensable injury, and for the same reason he quit his new job. Clearly, the evidence was in some conflict and subject to varying inferences. There was Dr. C's full-duty release and evidence that the claimant worked another two months after changing jobs. There was also evidence that he quit his job without explanation to start a new job, as well as an unappealed finding that the injury was a cervical strain. There was also a gap in time between starting the new job and the visit to the ER on January 7, 2000. The report of this visit does not address disability.

The claimant had the burden of proving disability for any period of time claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). And whether disability existed as claimed presented a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) further provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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 decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence sufficient to support the determination that the claimant had disability only for a limited time and that disability did not recur on and after January 7, 2000, as claimed.

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

Judy L. Stephens
Appeals Judge