

APPEAL NO. 001123

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 19, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury and that she had disability from July 28, 1999, through August 12, 1999. The appellant (carrier) appealed the injury and disability determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury and that she had disability from July 28, 1999, through August 12, 1999. The hearing officer summarized and discussed the facts in her decision and order. Briefly, claimant said she injured her back lifting at work on _____. She said she finished working that day and that her pain did not get better as the day went on. Claimant said she called in sick over the next few days but did not report a work-related injury until August 3, 1999. Claimant said she had seen Dr. O, Dr. RE, and Dr. G before she reported her injury. Dr. O initially noted muscle spasm and diagnosed claimant with damage at the facet joints and possible disc damage.

The applicable law regarding injury and disability issues and our standard of review are set forth in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order indicates that the hearing officer found claimant credible regarding her mechanism of injury, despite the fact that she did not immediately report her injury. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

Carrier contends the hearing officer erred in determining that claimant had disability from July 28, 1999, to August 12, 1999. Carrier asserts that there was no testimony to support this determination. 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). Claimant said that she was off work due to her injury after _____, and that she did not feel like she could return to work yet. This evidence supports the hearing officer's disability determination.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Judge

Gary L. Kilgore
Appeals Judge