APPEAL NO. 001157

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 1 and April 24, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable contusion injury to the base of her left thumb/palm on _____, and had disability on June 29, 1999 (all dates are 1999 unless otherwise noted) and from July 13th through July 20th. The claimant appeals only the disability portion of the decision, contending that her testimony and the medical evidence establishes disability from July 13th through October 11th. The respondent (carrier) responds, urging affirmance. The hearing officer's decision regarding the injury not having been appealed has become final. Section 410.169.

DECISION

Affirmed.

The claimant was employed as a customer service representative for a communication company (employer). The claimant testified that on _____ she was walking into the restroom, that she slipped on some water on the floor, and that she hit her left hand on the corner of a wall dispenser. The claimant did not fall to the floor, but testified that the dispenser "bent the thumb back." The claimant asserts an injury to her left hand, wrist, and thumb. The claimant said that she "shook it off" and apparently continued to work that day. The claimant called in sick the following day, _____, but did not report her injury at that time. The claimant returned to work and continued to work until July 13th, when she sought medical care from Dr. K, her group health (HMO) provider and family doctor.

The claimant and the employer's employee relations supervisor both testified that the claimant's duties involved answering the telephone using a headset and typing or entering data into a computer, working 40 hours plus some overtime a week. A longhand form progress note dated July 13th by Dr. K indicated that the claimant presented with complaints of left hand pain "X 2 wks," that examination of the left hand showed swelling at the base of the "thumb - palm," that the claimant was able to make a fist, and gave a history of the slipping incident. X-rays were taken which showed "no fractures, dislocations or soft tissue abnormalities." Dr. K had an impression of contusion of the left hand and took the claimant off work for one week until July 20th. The claimant took her one week work release to her supervisor at work. The claimant was to return to Dr. K on July 30th for a recheck if there was no improvement.

The claimant did not return to work but sought treatment on July 22nd from Dr. V, a chiropractor who had treated the claimant on some other claims. In a report of that date, Dr. V diagnosed a wrist sprain, thumb/hand sprain, radial styloid tenosynovitis, and lesion of the radial nerve. The claimant was started on a course of daily "chiropractic specific manipulative procedures" for 90 to 120 days. Dr. V took the claimant off work. The

claimant called the employer and reported a work-related injury on July 26th. Other nerve conduction studies performed on August 9th, and an MRI performed on September 17th, were essentially negative (the MRI findings were "compatible with resolving hematoma"). The claimant was released to light duty on October 11th and regular full duty on either October 22nd, 25th, or 28th.

The hearing officer, in her Statement of the Evidence, commented:

> Claimant's evidence was sufficient to prove by a preponderance of the credible evidence that she sustained a contusion to the base of her thumb/ palm of her left hand in the course and scope of employment on _____. Claimant was released from work by [Dr. K] on July 13, 1999 through July 20, 1999. Claimant's evidence was sufficient to prove by a preponderance of the credible evidence that she had disability on June 29, 1999 and from July 13, 1999 through July 20, 1999. Clinical testing does not support Claimant's assertion of disability after July 20, 1999.

The claimant appealed findings based on that comment asserting that her injury prevented her from returning to work where she was required "to constantly type on a computer keyboard and number pad while talking with customers." The claimant asks us to render a decision that she had disability through October 11th and "partial disability from October 11, 1999 to October 26, 1999."

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). Disability, by definition, depends upon there being a compensable injury. *Id*. In this case, the hearing officer obviously believed and found that claimant had only sustained a minor contusion to the base of her thumb and awarded disability based on Dr. K's one-week-off work release. Diagnostic exams, including x-rays, an EMG and an MRI, were essentially normal except for showing a resolving hematoma or bruise. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer clearly discounted the claimant's testimony and Dr. V's reports as was her prerogative. We find the hearing officer's decision on the disability issue sufficiently supported by the evidence.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge