APPEAL NO. 001377

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 May 8, 2000. The hearing officer determined that the appellant (claimant) had disability from January 13 through January 20, 2000. The claimant appealed, contending that the refusal to find disability beyond January 20, 2000, was against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant began work for the employer on January 3, 2000. She said her job was to involve cleaning hospital rooms, but instead she was assigned to a warehouse to unload supplies. On January 10, 2000, according to the stipulation of the parties, the claimant sustained a compensable low back injury. The medical evidence reflects a lumbar sprain/strain. She saw Dr. R, on referral from the employer on January 11, 2000. He placed her on restrictive duty of no lifting, pushing or pulling over 20 pounds, and no stooping or climbing until January 17, 2000. Medications prescribed were Motrin and Myoflex cream.

The claimant said she returned allegedly to light duty on January 12, 2000, in the laundry room where she said she was assigned to feed laundry into the large machines. She testified that she found this work too difficult due to her injury and the four types of medication she said she was taking. She returned to Dr. R on January 13, 2000, and was taken off work through January 14, 2000, and placed on light duty until January 20, 2000, when another appointment was scheduled for her with Dr. R. According to the claimant, she went back to work on January 15, 2000, to complain about not being able to do the modified duty. She further testified that on January 17, 2000, she was forced to resign because she was told by a Ms. M in human resources that she had no choice but to work or resign. The claimant denied ever telling anyone that she was quitting for personal reasons. The claimant then saw Dr. M on January 21, 2000, and was placed in an off-work status.

Ms. P, the workers' compensation manager for the employer, testified that Ms. M told her that the claimant wanted to resign for personal reasons and that the claimant never told her, Ms. M, that she was not able to do her light-duty job. Ms. P also said she had no reason to believe the claimant was required to work beyond her restrictions or that she was told to load laundry into the machines because this required special training. Other evidence reflected that the light duty in the laundry room was folding towels.

Whether the claimant had disability beyond January 20, 2000, was a question of fact for the hearing officer to decide and could be proved by the claimant's testimony alone if

found credible by the hearing officer. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In various findings, the hearing officer stated that the claimant failed to followup with Dr. R, but instead elected to see Dr. M. He also noted that evidence from Dr. M included only the report of January 21, 2000, and nothing after this. He also considered the nature of the compensable injury; evidence from the employer that the claimant was not assigned the duties described by the claimant; and the opinion of Dr. R returning the claimant to regular duties on January 20, 2000, in reaching a determination that the claimant did not have disability after this date.

In her appeal, the claimant argued that the hearing officer did not give sufficient weight to Dr. M's opinion and his planned course of treatment for the claimant. She also correctly observed that she was not required to prove disability with medical evidence. Ultimately, this case came down to the question of why the claimant stopped working and her credibility in asserting that the assigned work exceeded her physical restrictions. While another hearing officer may have found the claimant persuasive, the hearing officer in this case did not. 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.

For the foregoing reasons, we affirm the decision and order of the hearing officer

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge