

APPEAL NO. 001387

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 convened on March 16, 2000, with (hearing officer 1). At the request of the appellant (carrier), a continuance was granted. A CCH was held on May 15, 2000, with (hearing officer 2). She determined that the respondent (claimant) had disability from August 13, 1999, to the date of the CCH. The carrier appealed, urged that the decision of hearing officer 2 is not supported by sufficient evidence, and requested that the Appeals Panel reverse the decision of hearing officer 2 and render a decision that the claimant did not have disability from August 13, 1999, to the date of the CCH. The claimant responded, urged that the evidence is sufficient to support the decision of hearing officer 2, and requested that it be affirmed.

DECISION

We affirm.

At a prior CCH, it was determined that the claimant did not have disability as the result of a compensable injury sustained on _____. On November 19, 1999, the Appeals Panel reversed that determination and rendered a decision that the claimant had disability from April 20, 1999, and continuing through August 12, 1999, the date of the first CCH. The claimant testified that he had been told that he had lost at the first CCH; that he was desperate; that on September 2, 1999, he got a job driving a truck; that after a few days, his knee got stiff; that after about two or three weeks, his knee started swelling; that he returned to his treating doctor; and that he quit working on October 30, 1999, because he could no longer do the work. He said that he worked for a laundry for five days in November 1999, that he quit because his knee swelled, and that in both jobs he earned less than he did working for the employer. He stated that because of the actions of the carrier, he has had difficulty obtaining tests and treatment and that he cannot work because of the condition of his knee.

Records from Dr. VB, a chiropractor, for visits in September and October 1999 indicate that the claimant had tenderness, severe pain, swelling, and reduced motion in his left knee. A note in October 1999 states that the claimant's condition was affected by his employment, that there was an exacerbation of his symptoms, and that the claimant felt that he was getting worse. A note from Dr. VB dated September 17, 1999, states that the claimant could return to work effective September 1, 1999, and provided restrictions. On October 14, 1999, Dr. VB took the claimant off work. In notes dated in November and December 1999, Dr. VB kept the claimant off work.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness,

determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The determination of hearing officer 2 that the claimant had disability from August 13, 1999, to the date of the CCH is not 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Alan C. Ernst
Appeals Judge