

APPEAL NO. 001539

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 May 26, 2000. The hearing officer determined that: (1) the respondent, Texas Workers' (carrier 1), provided workers' compensation coverage for the employer on November 17, 1999; (2) for purposes of workers' compensation, (employer) was the employer for the appellant (claimant) on November 17, 1999; (3) carrier 1 waived its right to dispute the compensability of the claimed injury by not timely disputing; (4) claimant sustained a compensable right shoulder injury on _____; (5) claimant timely reported the injury to his employer; and (6) claimant had disability from January 17, 2000, through January 30, 2000. Claimant appealed the disability determination on sufficiency grounds, contending that he had continuing disability. Carrier 1 responded that the Appeals Panel should affirm the decision and order. The file does not contain a response from respondent (company) (carrier 2).

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not have disability after January 30, 2000. Claimant claimed disability from January 17, 2000, to February 3, 2000, and from May 5, 2000, to the date of the hearing. Claimant contended that he had continuing disability because employer did not make a bona fide offer of light duty.

The applicable law regarding disability and our appellate standard of review are stated in Texas Workers' Compensation Commission Appeal No. 000032, decided February 18, 2000; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995; and Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995.

The hearing officer summarized the evidence in the decision and order. Briefly, claimant testified that he worked as a plumber and that he sustained a compensable injury to his right shoulder while pushing on PVC pipe. Claimant said he worked light duty from January 31, 2000, through March 5, 2000. The hearing officer determined that claimant had disability only from January 17, 2000, to January 30, 2000. The hearing officer stated that: (1) the medical evidence showed that claimant sustained inflammation of the right shoulder rotator cuff; (2) the evidence claimant provided regarding disability was "scant and lacking in credibility"; and (3) the videotape evidence of claimant lifting a piece of furniture during a period when he was completely off work showed that claimant did not have disability.

In a May 2, 2000, letter to carrier 2, Dr. T said he reviewed claimant's medical records and a videotape taken of claimant in April 2000. Dr. T said: (1) a February 3,

2000, MRI revealed an old clavicle fracture and old changes in the AC joint; (2) a videotape was taken on April 20, 2000, of a man and a woman taking a heavy dresser out of a truck and moving it upstairs into a house; (3) the man used his arms and exhibited little pain behavior; (4) little or no loss of motion is shown by the videotape; (5) the videotape shows little objective evidence to suggest claimant has a true shoulder problem; (6) claimant does have old shoulder problems but Dr. T does not think surgery could help him; and (7) claimant may do light duty work. In a May 10, 2000, letter to carrier 2, Dr. P said: (1) the person in the videotape demonstrates no restrictions of use of the right shoulder; (2) the videotape did not indicate that the man favored his right shoulder or had an weakness; (3) claimant's activities precluded the presence of any disability and claimant may return to full-duty work; and (4) if he sustained a prior right shoulder injury, it has resolved.

In a March 21, 2000, letter, Dr. B stated that claimant had been taken off work because "light duty was not very light and continued to aggravate his shoulder." In an undated letter to claimant's attorney, claimant's treating doctor, Dr. B, stated:

I am writing in response to your letter of 5/4/00 I do feel that surgery is still indicated. . . . [Claimant has not said he does not want surgery, so he] made an error in judgment when he lifted the dresser. He may have had a fatalistic attitude, thinking that [he was] having surgery anyway. . . .

I have given [claimant] a light-duty work restriction in the past. I took him off work when it seemed apparent no actual light duty was in effect. He could feasibly return to [light duty] at this time if it could be shown that light duty was available. . . .

Whether claimant had continuing disability was a fact issue for the hearing officer. The hearing officer heard claimant's testimony, reviewed the evidence, and decided what facts the evidence established. The hearing officer determined that claimant did not meet his burden to prove that he was unable, because of his compensable injury, to obtain and retain employment at wages equivalent to his preinjury wage after January 30, 2000. Section 401.011(16). The hearing officer was the sole judge of the credibility of the evidence. Claimant's assertions concern credibility determinations that are the sole province of the hearing officer. The hearing officer was not required to believe the medical evidence from claimant's doctor regarding whether claimant had continuing disability. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge