APPEAL NO. 001696

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 June 30, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable lower back injury in the form of an occupational disease and had disability for less than eight days and, thus, was not entitled to temporary income benefits (TIBs). The claimant appealed the adverse determination on the issue of disability. The appeals file does not contain a response from the respondent (carrier). Neither party appealed the hearing officer's decision that the claimant sustained a compensable lower back injury in the form of an occupational disease and it has become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant attached to his request for review certain documents which were not offered into evidence at the CCH. The Appeals Panel is generally constrained to consider only the record of the hearing developed with certain exceptions not applicable here. Section 410.203(a).

The claimant testified that he worked as a roughneck on a drilling rig for the employer on February 15, 2000, and that his duties consisted of repetitive lifting of heavy equipment weighing between 50 and 100 pounds on a daily basis. The claimant contended that although he could not think of a specific incident on _____, that caused his back to hurt, he believed it was the repetitive heavy lifting that caused his back injury. The carrier contended at the CCH that the claimant had a prior back injury and was simply manifesting symptoms from this injury rather than sustaining a new injury.

The claimant testified that he continued to work for the next 10 days and asked to see a doctor on February 24, 2000. The claimant presented to a chiropractor, Dr. Z, on February 28, 2000, but no records from this visit were offered by the parties. The claimant testified that he was referred to Dr. K who saw him on March 6, 2000. A record from this visit reflects that the claimant presented with left lumbosacral back pain and left buttock, thigh, and leg pain. Dr. K diagnosed sciatica and possible lumbar intervertebral disc disease with radiculitis, neuritis or sciatica and released the claimant from work for one week. The claimant was instructed to return in one week. An office note dated April 10, 2000, reflects that Dr. K's diagnosis was sciatica with possible lumbar herniated disc and could have included a lumbar strain/sprain injury. No other records from Dr. K were offered by the parties and the claimant testified that instead of returning to see Dr. K he went to Dr. E. No office notes were offered from this visit. The claimant asserted disability from February 24, 2000, to the date of the CCH.

The hearing officer's decision noted that the claimant presented little evidence as to disability. "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). The determination as to an employee's disability is a question of fact for the hearing officer and can be established by the testimony of the claimant alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993.

In this case, the hearing officer determined that the claimant's injury caused him to be unable to earn his preinjury wage beginning March 6, 2000, and ending on March 13, 2000. This finding is presumably based on the release from work given to the claimant by Dr. K as the testimony from the claimant regarding disability was quite scarce. The claimant testified that he worked until he could get an appointment with Dr. Z on March 6, 2000. The hearing officer asked the claimant whether he had returned to work and the claimant replied that he had not. This answer was followed by another question as to whether the claimant had been released back to work by his doctor and the claimant replied that "this had not been clarified yet," because he had not returned for follow-up treatment due to not having the money to do so. The questioning turned to another topic. Later in the hearing, the hearing officer asked the claimant if he could have worked after the one week that he was released by Dr. K and the claimant replied that "they just want you to keep coming back so they can get your money." The hearing officer then stated to the claimant, "so you think you could have worked," and the claimant responded, "No, I'm not saying that," and reiterated that the doctors only wanted him to return every week for the money.

The hearing officer found that the claimant did not miss eight or more days of work due to his injury. TIBs may not be paid for an injury that does not result in disability for at least one week. Section 408.082(a). If the disability continues for longer than one week, weekly TIBs begin to accrue on the eighth day after the date of the injury. Section 408.082(b). Although the claimant asserted that he had disability beyond March 13, 2000, the hearing officer, as fact finder, obviously did not find the testimony of the claimant persuasive as to this issue or, due to the paucity of evidence, did not believe that the claimant had sustained his burden to establish disability beyond March 13, 2000. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Section 410.165(a).

In a case such as the one before us, the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. Soto.

Only were we to conclude, which we do not in this case, that the hearing officer's determination was so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb that determination. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge