APPEAL NO. 001896

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 July 7, 2000. With regard to the issues before her, the hearing officer determined that the appellant's (claimant) compensable (hernia) injury of _____, does not extend to or include the lumbar spine and that the claimant did not have disability from March 22, 2000 (all dates are 2000 unless otherwise noted) through the date of the CCH.

The claimant appealed, emphasizing his testimony and the treating doctor's reports that the compensable hernia injury also includes a low back injury and that he has had disability after March 22. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as the receiving manager for an office supply store (employer). The parties stipulated that the claimant sustained a compensable left inguinal hernia helping lift or move a 200- to 300-pound "dock plate" on _____. The claimant was eventually referred to Dr. R, who performed hernia repair surgery on February 9. The claimant testified that he complained of back pain the following day, February 10, when a nurse called to check on his condition. (There is no documentation of that complaint.) The sequence of events thereafter is both unclear and disputed. The claimant had retained an attorney and the claimant testified that his attorney referred him to Dr. P. In evidence is an Employee's Request to Change Treating Doctors (TWCC-53) dated February 14 requesting a change of treating doctors from Dr. R to Dr. P giving as the reason for the change:

> I do not feel that I have been getting appropriate medical care and I am not getting any better. I have tried to talk to my doctor about my concerns but with no success. I need a doctor who will listen to my problems and concerns, and who can help me get well so that I can get back to work.

The form was also dated February 14 by Dr. P.

It is undisputed that the claimant's first post-operative visit and conversation with Dr. R was on February 17 when, the claimant said, he complained about his back and that Dr. R dismissed his low back complaints as being related to his surgery and said that they would go away. The claimant filed his TWCC-53 with the Texas Workers' Compensation Commission (Commission) on February 18. The claimant testified that he had completed the TWCC-53 and had merely gotten his dates confused (which as the hearing officer points out does not explain how or why Dr. P dated the form February 14). The request

to change treating doctors was approved by the Commission on March 1. Dr. R released the claimant back to full duty effective March 22.

Dr. P saw the claimant for the first time on February 29, diagnosed the claimant with "lumbar intervertebral disc syndrome w/o myelopathy, intersegmental disfunction and paraspinal numbness." Dr. P began treating the claimant with ultrasound, ice and chiropractic therapy and took the claimant off work. An MRI of the lumbar spine performed on March 23 was read as being "unremarkable." In a report dated April 18, Dr. B, a consultant, recites a history that the claimant felt immediate low back pain on _____, and had an assessment of lumbar strain.

The hearing officer gives a detailed recitation of the evidence in her Statement of the Evidence and comments that "credibility played a major role in sorting the facts." The hearing officer gives some examples of "discrepancies between Claimant's testimony and information contained in the documentary evidence." We have frequently noted that 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 trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

The claimant emphasizes the evidence from his point of view; however, 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 evidence for that of the hearing officer.

The claimant apparently had disability due to the compensable hernia to March 22, when he was released to full duty by his then treating surgeon, Dr. R. Any disability, as defined in Section 401.011(16), past that date is due to the alleged back condition. In that we are affirming the hearing officer's decision on the extent of injury, we also affirm the decision on disability.

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:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge