APPEAL NO. 001993

Following a contested case hearing (CCH) held in (city 1), on August 1, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant) had sustained a compensable low back injury on _________, but had no disability resulting from that injury. The claimant appealed the determination that she had no disability resulting from the _________, compensable injury. The respondent (carrier) responded that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Reversed and rendered.

The claimant was employed by (employer) on _________, and sustained a compensable low back injury. The hearing officer found that the claimant did not have any disability resulting from the compensable injury and the claimant has appealed that determination.

In his statement of the evidence, the hearing officer stated:

> On March 13, 2000, Claimant sought medical treatment from a doctor in [city2]. Upon presenting her off-work slip, which was written in Spanish, to her supervisor, Claimant was advised that the slip was insufficient and needed to be in English. Accordingly, Claimant sought and received medical treatment from [Dr. L] in [city 1].
>
> Claimant further testified that although [Dr. L] took her off work from March 20, 2000 to July 28, 2000, she continued operating her own business where she prepares and sell [sic] burritos and jewelry.

The hearing officer then found that the claimant's injury did not cause her to be unable to obtain and retain employment at wages equivalent to her preinjury wage from March 13 through July 28, 2000, although there is no evidence in the record of any reason for the claimant's inability to work for the employer during this period other than the compensable injury.

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. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992.

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). While a claimant's testimony alone may be sufficient to prove an injury, and incidentally disability, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's 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. 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). In a case where both parties present evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and 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 it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). However, the hearing officer's determinations of fact may be set aside if they are so against the great weight and preponderance of the evidence as to be manifestly 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).

In the case before us, the claimant's testimony and the medical evidence presented establish that the claimant was unable to work from March 13, 2000, through July 27, 2000, and that she was released to return to work and did return to work for the employer on July 28, 2000. There is no evidence of any cause for her inability to work other than the compensable injury. A review of the hearing officer's decision leads us to conclude that the hearing officer determined that the claimant was able to obtain and retain employment at wages equivalent to her preinjury wage because she continued to prepare and sell burritos and sell jewelry. It is uncontroverted that the claimant had been engaged in those businesses for a considerable length of time before she went to work for the employer and that those businesses were concurrent with her employment with the employer at the time of the compensable injury. In Texas Workers' Compensation Commission Appeal No. 990287, decided March 26, 1999, (Unpublished) and Texas Workers' Compensation Appeal No. 981568, decided August 26, 1998, we noted that the fact that an injured employee may continue in concurrent employment has no effect on a determination of disability from a compensable injury.

In light of the uncontroverted evidence in this matter, the hearing officer's determination that the claimant had no disability is contrary to the great weight and preponderance of the evidence, is clearly wrong, and is manifestly unjust. We therefore reverse the finding of the hearing officer that the claimant's injury did not cause her to be unable to obtain and retain employment at wages equivalent to the preinjury wage and the resulting conclusion of law and render a decision that the claimant had disability resulting from the compensable injury beginning on March 13, 2000, and continuing through July 27, 2000.

____
Kenneth A. Huchton
Appeals Judge

CONCUR:

____
Gary L. Kilgore
Appeals Judge

____
Philip F. O'Neill
Appeals Judge