

## APPEAL NO. 002062

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq* (1989). A contested case hearing was held on August 9, 2000. With regard to the issue before him the hearing officer determined that claimant (appellant) had not sustained a compensable injury on \_\_\_\_\_, and did not have disability.

Claimant appealed, contending that her December 1999 injury was different and to a different body part than an August 1999 injury, that she had disability from February 7, 2000, through June 15, 2000, and that a "claimant's testimony alone can prove an injury." Claimant requests that we render a decision in her favor. Carrier (respondent) responds, urging affirmance.

### DECISION

Affirmed.

It is undisputed that claimant sustained a compensable thoracic spine injury on \_\_\_\_\_ (not directly at issue in this case), and that carrier accepted liability for that injury and began paying temporary income benefits (TIBs). Claimant was released to return to light duty four hours a day on December 6, 1999. Whether claimant was still "in pain" or not at that time is in dispute. Claimant worked at a light-duty sitting job on December 6, 1999. The next day claimant was assigned to a sitting job for two hours and then was assigned to operate two machines which opened and sorted mail ( her regular job as an "equipment specialist") which required lifting trays or boxes of mail. Claimant asserts that she sustained a new lumbar and bilateral shoulder injury lifting the mail trays and boxes. Whether claimant reported the injury that day is in dispute, although claimant apparently continued to work four hours a day light duty until December 14, 1999, and continued to receive TIBs for the August 1999 injury. Claimant was examined by Dr.R a carrier-required medical evaluation doctor, for her \_\_\_\_\_ injury, on December 20, 1999. In a report dated December 23, 1999, Dr. R clearly considered not only the thoracic injury but also claimant's lumbar and shoulder complaints. Dr. R certified claimant at maximum medical improvement (MMI) on December 20, 1999, with a zero impairment rating. Claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) for her alleged \_\_\_\_\_, injury on December 21, 1999. Claimant returned to the clinic which had been treating her for her \_\_\_\_\_ injury on December 21, 1999, and Dr. V diagnosed claimant with lumbar segmental dysfunction, postural paresis, left shoulder segmental dysfunction and right shoulder sprain. Claimant continued to receive TIBs for the \_\_\_\_\_ injury. Although not entirely clear, apparently a designated doctor for the \_\_\_\_\_ injury certified claimant at MMI on February 6, 2000. In evidence are a number of off-work slips beginning February 16, 2000, taking claimant off work beginning January 25, 2000, through "at least 3/16/00." An MRI of the lumbar spine performed on March 22, 2000, was "essentially normal with no evidence of herniated nucleus pulposus or spinal stenosis." (Claimant testified that Dr. V wants to have a discogram performed to check the accuracy of the MRI but carrier has denied

authorization.) Claimant returned to light duty working four hours a day on March 2, 2000, and that restriction was modified to working light duty eight hours a day on June 15, 2000. Claimant was examined by Dr. B, a Texas Workers' Compensation Commission selected RME doctor, on March 30, 2000. Dr. B, in a report of that date, essentially found nothing wrong with the claimant, that claimant's "pain process. . . has no objective manifestation," that "it is highly unlikely" that claimant would benefit from continued "chiropractic care or alternative medical therapies" and that it is Dr. B's "impression that the resultant association of job dissatisfaction which may in fact be the issues driving the medical issues." (Claimant testified that she loved her job.) Claimant claims disability due to her lumbar/shoulder \_\_\_\_\_, injury from February 7, 2000 (the day after carrier stopped TIBs for the \_\_\_\_\_ injury), to June 15, 2000.

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). 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 evidence for that of the hearing officer.

Accordingly, the hearing officer's decision and order are affirmed.

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Tommy W. Lueders  
Appeals Judge

---

Robert W. Potts  
Appeals Judge