

APPEAL NO. 002114

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 19, 2000, and July 25, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable new back injury on_____, and that he had disability from January 21, 2000, through June 20, 2000. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury and that he had disability from January 20, 2000, through June 20, 2000. The hearing officer summarized and discussed the facts in her decision and order. Briefly, claimant said he sustained a work-related back injury on_____, when he was working as a helper. Claimant said his job involved a lot of bending and twisting and that his duties included picking up pieces of scrap metal and throwing them into a container. Claimant said he did heavy work, that he had had prior back injuries and back pain, and that his back sometimes ached. Claimant said he did not want to complain about his back on_____, and that he thought the pain would go away. He said he chose to report a back injury on the Monday after his injury because his pain grew worse. Claimant said he was offered a light-duty position, but he chose to take vacation time because his "body wasn't ready" to work and he needed time to recuperate. Claimant saw Dr. B on January 27, 2000, who took claimant off work and then returned him to full-duty work on June 20, 2000. In a May 1, 2000, report, Dr. F opined that claimant had sustained a new back sprain injury on_____, and that claimant could do light-duty work.

The applicable law regarding compensable injuries and aggravation and our standard of review are set forth in Texas Workers' Compensation Commission Appeal No. 000077, decided February 28, 2000. The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. The hearing officer specifically stated that she found claimant to be credible in his testimony and noted medical evidence regarding whether claimant sustained new damage or harm to the physical structure of his body. The hearing officer heard the evidence regarding whether claimant was consistent in reporting how he injured his back; whether claimant had rubbed his back at times while working before_____; and whether claimant performed bending and stooping work on_____. We conclude that the hearing officer's determination that claimant injured his back at work on_____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).¹

¹We note that there was no issue regarding bona fide offer in this case.

Carrier contends the hearing officer erred in determining that claimant had disability from January 21, 2000, through June 20, 2000. Carrier asserts that, if claimant had disability at all, he did not have disability after January 17, 2000, because Dr. D stated that claimant could return to work that day. The hearing officer considered the conflicting evidence regarding whether claimant had disability, why claimant decided to take vacation time after his injury, and whether claimant had disability after January 17, 2000. The hearing officer also considered the videotape evidence and decided what weight to give to this evidence. The evidence from claimant and Dr. B supports the hearing officer's disability determination. We conclude that this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge