

APPEAL NO. 002363

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 September 19, 2000. The hearing officer determined that the compensable injury was not a producing cause of the respondent's (claimant) hypertension and that the claimant had disability from the compensable injury from February 19, 2000, to the date of the CCH. The appellant (carrier) appealed the disability determination on the grounds of sufficiency of the evidence. The claimant filed a response urging that the evidence was sufficient to support the finding that the claimant had disability from February 19, 2000, to the date of the CCH and should be affirmed. Neither party appealed the determination that the compensable injury was not a producing cause of the claimant's hypertension and it has become final by operation of law. Section 410.169.

DECISION

Affirmed as reformed.

The parties at the CCH stipulated that the claimant sustained a compensable back injury on or about _____. The hearing officer entered a stipulation that "on or about _____, claimant sustained a back injury." This stipulation does not conform to the stipulation made at the hearing and we reform the finding to state: "[O]n or about _____ the claimant sustained a compensable back injury."

The claimant asserted at the CCH that he had disability beginning February 19, 2000, to the date of the CCH. He testified that he worked as a welder and that on _____, he sat down to weld something; when he rose back up into a standing position he hit his upper back against a table. The claimant explained that the weight of the welding gun and hitting himself against the table caused him to fall back down. When he reported to his supervisor that he had just injured himself he was told to take some medication. The claimant admitted that he did not seek medical treatment until he presented to Dr. J on February 15, 2000.

The claimant testified that Dr. J released him back to work and gave him some medications for his pain, but that he continued to hurt and asked the employer for another doctor. The claimant contended that when he asked for another doctor on February 16, 2000, he was fired so he asked for his vacation pay. The claimant testified that he asked his supervisor for his job back because his wife was sick, but when the supervisor refused to do so the claimant went to the plant manager who told the claimant that he was backing the supervisor "100%" and for him to leave or security would be called. The claimant stated that he just wanted to tell the plant manager about his rights, "I was just talking about my worker rights because I didn't want to leave work."

After termination the claimant stated that he tried to go back to Dr. J, but that the employer had already let him go and didn't want to send him back to a doctor. He

therefore went to Dr. H, his family doctor. According to the claimant Dr. H took the claimant off work and schedule an MRI for his upper back, which was done. The claimant stated that Dr. H then wanted another MRI for the rest of his back but the carrier refused to pay for the additional MRI. The claimant testified that he had not gone back to work because Dr. H had not released him back to work. He contended that he could not work because his lower back hurt, he had lost strength in his legs, his stomach and groin had pain and he got diarrhea. The claimant denied that he had high blood pressure prior to January 2000. During closing the claimant asserted that the back injury was the primary cause of his "incapacity."

Medical records from Dr. J's office reflect that on February 15, 2000, the claimant presented for complaints of a sore back from stubbing his back against a tabletop. Dr. J found minimal tenderness in the upper right back at the level of the scapula. The claimant had full range of motion and the spine was non-tender. The claimant was released back to work with no restrictions with instructions to return if the pain lasted longer than one week.

Medical records from Dr. H's office reflect that the claimant presented on February 19, 2000, and that the claimant was diagnosed with a thoracic strain and upper back/thoracic facet joint syndrome. The claimant returned for conservative treatment on February 21, 2000, and was released from work for one week. A progress note dated March 10, 2000, reflects that the claimant was off work pending an MRI. Neither party offered the results of the thoracic spine MRI testified to by the claimant.

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). Disability, by definition, depends upon there being a compensable injury. *Id.* A claimant's testimony alone is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). 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.

We have held that the 1989 Act does not impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably available and fully compatible with his physical condition and generally within the parameters of his training, experience, and qualifications. On the other hand, we do not believe the 1989 Act is intended to be a shield for an employee to continue receiving temporary income benefits where, taking into account all the effects of the injury, he is capable of employment but chooses not to avail himself of reasonable opportunities. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991; Texas Workers' Compensation Commission Appeal No. 001637, decided August 29, 2000.

In the case before us, the hearing officer apparently found the claimant's testimony credible that he was unable to work after he was terminated because of back pain. The

1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain , 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm as reformed the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge