APPEAL NO. 002438

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 October 2, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) sustained a compensable lumbar spine and hip injury on _____ (all dates are 2000 unless otherwise noted), that the claimant timely notified her employer of her injury, and that the claimant has not had any disability. The hearing officer's decision on the issues of injury and timely notice have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals each and every finding against her regarding the determination that she has not had disability. The claimant requests that we reverse the hearing officer's decision and render a decision that the claimant had disability "from 5-15-00 to the present" (apparently meaning the date of the CCH). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable low back and hip injury when she slipped and fell backwards on some stairs while carrying 12 to 14 pairs of jeans. It is undisputed that the claimant continued to work after her fall, but she contends that she missed some time going to therapy and that her hours were reduced. The cause of the reduced hours is not clear in that around the time of her injury the claimant enrolled in some school courses. (A majority of the CCH dealt with the injury and notice issues and there is little evidence regarding the disability issue.) The claimant apparently worked variable hours, some days working five and one-half to six hours and other days working eight to eight and one-half hours. The claimant testified that before her injury, she was working 35 to 37 hours a week and after her injury she was working 25 hours a week. The cause of the reduced hours is disputed. The claimant, at the CCH, asserted that a reduction of 10 hours a week was due to the compensable injury and this continued for about two months. The claimant contended that she had a total of "about two and a half weeks" of disability. On appeal, the claimant simply argues that she had disability from May 15 (when the claimant began seeing a chiropractor on a regular basis) "to present."

Disability is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. While a claimant's testimony alone could establish disability, the evidence here is conflicting and in fact the claimant's contention is even unclear. At the CCH, the claimant asserted two and one-half weeks disability whereas on appeal, the claimant asserts disability from May 15 to the present.

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).

Upon review of the record submitted, we find no reversible error. 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:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge