APPEAL NO. 002447

Following a contested case hearing held on September 25, 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 respondent (claimant) had disability resulting from the compensable injury of _____, beginning on _____, and continuing through December 19, 1999, as stipulated by the parties, and again beginning on December 20, 1999, and continuing through the date of the hearing. The appellant (carrier) asserts that the hearing officer's determination that the claimant had disability from December 20, 1999, through the date of the hearing is against the great weight and preponderance of the evidence and requests that the Appeals Panel reverse the decision and render a new decision that the claimant had disability only from _____, through December 19, 1999. The claimant responded that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, when he slipped off his truck's ramp. At the time of his injury, the claimant's employment required that he routinely lift items weighing 75 to 100 pounds, load them onto a dolly, and then transport a total weight of up to 500 pounds with the aid of the dolly.

It is undisputed that the claimant had disability resulting from the compensable injury from _____, through December 19, 1999. It is also undisputed that several doctors, including Dr. M, a Texas Workers' Compensation Commission (Commission)-selected designated doctor, had certified that the claimant had reached maximum medical improvement (MMI) on December 20, 1999. It is further undisputed that the claimant continued to receive medical care after the certification of MMI. On January 26, 2000, Dr. M performed his examination of the claimant. Dr. M's narrative report indicates that the claimant told him that a myelogram had been performed the day before the examination, but there is no indication that Dr. M had the myelogram results for review.

After the myelogram of January 25, 2000, the claimant was scheduled for a discogram. The discogram was positive for concordant pain at L5-S1. After reviewing the discogram results, Dr. N recommended decompression and fusion at L5-S1. A carrier-selected second opinion doctor concurred in the need for spinal surgery. Dr. M was advised of the discogram results and the surgical recommendation and, on June 22, 2000, Dr. M amended his report to state that the claimant had not reached MMI. The claimant underwent spinal surgery on August 2, 2000.

In support of his assertion that he had disability from the date of his injury through the date of the hearing in this matter, the claimant offered a letter from Dr. N dated July 17, 2000, which stated that the claimant had been unable to work from December 1, 1999,

through the date of the letter. At the time the letter was written, the claimant's surgery had been scheduled. The carrier countered the claimant's argument by offering into evidence proof of the earlier certifications of MMI and a videotape of the claimant's activities on March 6, 2000, and March 7, 2000. The March 6, 2000, videotape shows the claimant unloading several ice chests and fishing equipment from his truck, cleaning the ice chests, and pulling weeds in his yard. The March 7, 2000, videotape shows the claimant opening a gate, driving his truck an unspecified distance, and entering and leaving a convenience store. After reviewing all of the evidence, the hearing officer found that the claimant had been unable to obtain and retain employment at wages equivalent to his preinjury wage as a result of the compensable injury starting on _____, and continuing through the date of the hearing.

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. The hearing officer's decision in this matter is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge