APPEAL NO. 002631

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN.§ 401.001 *et seq.* (1989 Act). On October 6, 2000, a contested case hearing (CCH) was held. The hearing officer resolved the disputed issue by deciding:

> The appellant (claimant) did not have disability from June 8, 2000, through the date of the CCH.

The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____. The claimant underwent lumbar spine surgery on March 2, 2000. Dr. G, who performed the surgery, released the claimant to return to work without restrictions on June 8, 2000, contingent on the claimant passing his Department of Transportation physical examination, which the claimant said he passed. The claimant said that when he returned to work on June 9, 2000, he reinjured his back bending over to pick up papers. There was testimony and documentation from the carrier's witnesses that the claimant was terminated from employment on June 9, 2000, because the claimant had violated a company policy against using abusive language on June 5, 2000, when he was at the employer's facility to vote in a union election. Dr. G wrote on June 13, 2000, that the claimant is unable to work due to an exacerbation of his back injury on June 9, 2000.

Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer determined that the claimant did not have disability from June 8, 2000, through the date of the CCH. There is conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not 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 (Tex. 1986).

The claimant complains that the ombudsman who assisted him at the CCH was not the ombudsman he discussed his case with prior to the CCH. The hearing officer asked the claimant if he wished to proceed with the CCH with the assistance of the ombudsman who was at the CCH and if he had met with that ombudsman for at least 15 minutes prior to the CCH, and the claimant answered both questions affirmatively. *See* Section 409.041(b)(5). The claimant also complains about the assistance provided by the ombudsman. We do not generally review whether an ombudsman satisfactorily assisted

an employee. Texas Workers' Compensation Commission Appeal No. 981823, decided September 18, 1998.

Since the parties stipulated that the date of injury was _____, and that venue was proper in the field office where the CCH was held, we find no basis for reversal with regard to the claimant's disagreement with those matters on appeal.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge