APPEAL NO. 002720

Following a contested case hearing (CCH) held on October 31, 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 herein) had disability beginning on April 8, 1999, and continuing through April 19, 2000. The appellant (carrier herein) files a request for review arguing that this determination was contrary to the evidence. The claimant responds that there is sufficient evidence to support the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant was employed as a derrick man on an oil rig. The parties stipulated that on _____, the claimant sustained a compensable injury to his low back. The claimant testified that as a result of his injury he was unable to work from March 3, 1999, through the date of the CCH. The claimant was initially put on light-duty work by Dr. B. The claimant testified that he continued on light-duty work until March 2, 1999, when, he believed he could no longer perform light-duty tasks. The claimant did not return to work and was eventually terminated by the employer. On April 8, 1999, the claimant sought treatment with Dr. A, and Dr. A placed the claimant on an off-work status that day. The carrier presented a surveillance film into evidence on which the claimant was shown on April 19, 2000, bending all the way down to the ground. Dr. A and Dr. T, the claimant's current treating doctor, both testified at the CCH. Dr. A testified that based upon his viewing of the surveillance film, he believed that the claimant may have exhibited some symptom magnification. Dr. T released the claimant to return to work at light duty on October 2, 2000. Both Dr. A and Dr. T noted that the claimant's sprain/strain should have resolved within one year.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence

we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review we find no grounds to reverse the decision of the hearing officer. Disability is defined in section 401.001(16) as the inability because of the compensable injury to obtain employment at wages equivalent to the preinjury wage. Proof of disability does not require proof of a total inability to work. The question of disability is one of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. There is sufficient evidence in the testimony of the claimant and the medical evidence to support both the hearing officer's finding disability. While the evidence was conflicting, it was the province of the hearing officer to resolve the conflicts in the evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Susan M. Kelley
Appeals Judge