APPEAL NO. 002780

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 November 13, 2000. Although not reflected in the hearing officer's decision, the record was held open for the appellant/cross-respondent (claimant) to submit additional MRI reports. With regard to the issues before him, the hearing officer determined that the claimant's compensable left shoulder contusion and cervical strain were not a producing cause of injuries to his low back, left elbow, left hand, left thumb, thoracic area, right great toe, "right ear (tinnitus)," either foot, right ankle, right heel, either knee, or depression. The hearing officer limited the claimant's compensable injury to the left shoulder, a cervical strain, and upper left rib cage contusion. The hearing officer determined that the claimant did not have disability, as that term is defined in Section 401.011(16), on or after January 10, 2000 (to the date of the CCH).

The claimant appealed, contending that all the conditions were related to his compensable injury citing "ample documentary evidence." The claimant also asserts disability from January 10, 2000, to the date of the CCH. The respondent/cross-appellant (carrier) filed a conditional appeal challenging the hearing officer's conclusion that the claimant had sustained a compensable left shoulder and cervical injury (although the carrier had accepted a left shoulder contusion and cervical sprain) and an upper left rib cage contusion. The carrier responded that the hearing officer's other determinations be affirmed.

DECISION

Affirmed.

The claimant did not testify, although he was present, at the CCH and the factual background of the case is derived from the exhibits. It is undisputed that the claimant was in the course and scope of his employment when he was involved in a motor vehicle accident (MVA) when the vehicle he was riding in was rear-ended on _____. Although the severity of the MVA is disputed, the hearing officer commented that the MVA was "seemingly minor." The police report indicates that the claimant refused medical attention, and photographs of the claimant's vehicle indicate little damage. The claimant reported the accident and injury, missed a few days (less than seven) of work, and returned to work at his regular duties. The claimant continued work until October 26, 1999, when he took a leave of absence for spinal surgery due to a military service-connected injury. The claimant has not returned to work.

Emergency room records of June 10, 1999, indicate various complaints, but the discharge summary only references a cervical strain and takes the claimant off work until June 14, 1999. It is undisputed that the claimant has various medical conditions related to military service and other conditions related to injuries sustained working for the U.S. Postal Service. The hearing officer, in the Statement of the Evidence, summarizes some

of the numerous medical reports in evidence. As the carrier argued, Dr. L, the claimant's treating doctor for this injury and prior injuries, seems to tailor his reports regarding the claimant's various injuries. The hearing officer commented:

> Further mindful of the definition of injury as damage or harm to the physical structure of the body, I am not persuaded that the MVA caused a low back, left elbow, left hand, left thumb, thoracic area, right toe, right ear tinnitus, bilateral feet, right ankle, right heel, or bilateral knee injuries. I am persuaded that the evidence established a cervical sprain injury, a left shoulder injury, and an upper left rib cage contusion injury (this latter caused by the effect of wearing a seat belt).
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> The disability issue only concerns disability after January 10, 2000. There was evidence that the Claimant was off work about a week after the MVA and then returned to work. He went on short term disability on October 26, 1999, in connection with his low back surgery for his military service connected injuries. It was not clear from the documentary evidence presented why January 10, 2000, was the date chosen to re-establish disability. . . . [Dr. L] did not connect the Claimant's disability then with the MVA. The Claimant did not otherwise establish disability through his own testimony.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.) We conclude that the hearing officer's findings, conclusions, and decision regarding both the appeal and the cross-appeal are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge