

APPEAL NO. 002804

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 19, 2000. The hearing officer determined that the appellant (claimant) did not have disability for the disputed period that ran from October 20, 1998, through April 11, 1999.

The claimant has appealed, arguing that she was never given a full release and that, consequently, the fact that her job was terminated should not count against disability. The respondent (carrier) responds that the decision should be affirmed. Both parties recite facts in favor of their position.

DECISION

We affirm.

The claimant worked weekends in a fast food stand at a flea market. She slipped and fell on some grease on _____, landing on both knees when she fell. The claimant had surgery in July 1998, and returned to work in October 1998, working in a tollbooth for the same flea market. This entailed sitting in the booth and collecting money, but she was free to sit or stand. The restrictions that the claimant described were no bending, kneeling, squatting, or stair climbing, and sitting or standing for increments of 30 minutes at a time. Her surgeon, Dr. S, wrote on September 21, 1998, that the claimant could return to full duty with no squatting, kneeling, or prolonged stair climbing. His release form indicated that the claimant should be engaged in "sitting only" jobs. Her restrictions in February 1999 were these same three restrictions plus no prolonged standing. There was no prohibition from Dr. S against prolonged sitting.

In April 1998, the claimant asked to work every other weekend to spend time with her children and was allowed to do so. Although she steadfastly maintained that her job was terminated on October 22 (a Thursday) by her boss, Mr. D, employer time cards showed that she worked that weekend after the 22nd. Mr. D agreed that the claimant's job was terminated when she did not show up for work the weekend of November 7 and 8, 1998. The claimant said that she would have been able to continue working had this not occurred. It was stated by the claimant's attorney that the disputed period of disability was October 20, 1998, through April 11, 1999, although the significance of the ending date was not stated. The claimant had testified that she had not worked since the termination although she was able to drive her car and do chores. She said no doctor had released her to full duty.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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.).

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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). While being fired is not dispositive of disability, it is a fact for the trier of fact to consider along with the record as a whole.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge