

## APPEAL NO. 002808

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 with sessions on March 20, May 25, and October 27, 2000. The hearing officer resolved the disputed issue of disability by deciding the appellant (claimant) did not have disability from November 8, 1999, through the date of the CCH due to his July 1, 1999, injury. The claimant appealed contending that the hearing officer's resolution of the disability issue was contrary to the evidence. There is no response to the claimant's request for review from the respondent (carrier) in the appeal file.

### 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 injured his left thumb on \_\_\_\_\_, when it was mashed in a machine, amputating the tip of the left thumb. The claimant returned to work on July 9, 1999, with duties of watching films and reading material. On September 17, 1999, after the claimant was released to restricted duties, the claimant was given duties of removing cement off pipes. The claimant testified that while removing cement from pipes, he injured his right hand on \_\_\_\_\_. The claimant continued to work until his employment was terminated in October 1999 after the claimant missed worked for three days without calling in.

There was conflicting evidence presented at the CCH on the disputed issue. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The question under our standard of review was whether the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's finding that the claimant did not have disability from November 8, 1999, through the date of the CCH. The claimant argues that he was still under work restrictions at the time of his termination and those restrictions were never lifted. However, in light of the fact that claimant was able to work with these restrictions prior to his termination, we cannot say that the hearing officer, as matter of law, was required to find disability. See Texas Workers' Compensation Commission Appeal No. 000175, decided March 16, 2000.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge