

APPEAL NO. 002904

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was originally held on July 21, 2000. The hearing officer determined that the appellant (claimant) had disability resulting from a compensable injury of _____, beginning on December 9, 1999, and ending on February 25, 2000.

The claimant appealed and in Texas Workers' Compensation Commission Appeal No. 001966, decided September 27, 2000, the Appeals Panel remanded the issue of disability back to the hearing officer with instructions to make additional findings of fact to determine and support the ending date of disability as determined by the hearing officer.

No hearing on remand was held, but the parties were given an opportunity to make written arguments. Upon remand, the hearing officer determined that the claimant's disability ended on March 15, 2000. The hearing officer found that a videotape of the claimant riding a bicycle in March and April of 2000 demonstrated that the claimant was able to balance; and that the videotape evidence supported a report, dated February 25, 2000, from Dr. L which stated that the claimant was often asymptomatic, that the claimant had good range of motion, and that the claimant's injury was minor. The hearing officer further found that the claimant was able to return to his employment as a bus driver no later than March 15, 2000. The claimant appealed, contending that the hearing officer's determinations were against the great weight of the evidence. The respondent (self-insured) replied, stating that the hearing officer's determinations were supported by the evidence and that her decision should be affirmed.

DECISION

We affirm the decision and order of the hearing officer.

The facts of this case are set out in our decision in Appeal No. 001966, *supra*. In remanding the case back to the hearing officer, we expressed our concern that the hearing officer had not explained how she had then determined that the claimant's disability had ended on February 25, 2000, when the only event of that day was Dr. L's report, which had not addressed the claimant's ability to return to work.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this case, the hearing officer considered the conflicting medical evidence before her and the objective evidence of the claimant's videotaped activities on March 15, 2000. The hearing officer determined that the claimant's observed activities of March 15, 2000, when coupled with

the claimant's asymptomatic presentation, good range of motion, and absence of neurological impingement in Dr. L's office, indicated that the claimant was capable of returning to his normal occupation as a bus driver no later than March 15, 2000. The determinations of the hearing officer are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust, and we will not substitute our judgement for hers. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge