

## APPEAL NO. 002939

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) had not abandoned medical care, that the appellant (carrier) was not entitled to suspend temporary income benefits due to the alleged abandonment of medical care, and that the claimant had disability beginning on November 4, 1999, and continuing through the date of the hearing. The carrier appealed, asserting that the hearing officer's determination that the claimant did not abandon medical care is against the great weight of the evidence and further contending that the asserted abandonment of medical care establishes that the claimant did not have disability during the period of abandonment. The claimant responded that the hearing officer's determinations were correct and that the hearing officer's decision and order should be affirmed.

### DECISION

We affirm the decision and order of the hearing officer.

There was conflicting evidence adduced during the hearing. While there is evidence that the claimant did not have any appointments with her treating doctor between her visits on April 6, 2000, and September 21, 2000, there was other evidence that the claimant was undergoing physical therapy during this period. The carrier argues that there was no change in condition shown which would warrant the treating doctor's rescinding the claimant's light-duty release and taking the claimant off work. There was evidence adduced that the claimant had begun having spasms in her hand and that her treating doctor believed that the light-duty work provided for the claimant was repetitive and did not comply with the restrictions he established in allowing the claimant to return to work. There was also evidence that the claimant had "trigger finger" surgery on January 26, 2000, and underwent physical therapy after that surgery.

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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his.

The hearing officer's decision and order are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge