

APPEAL NO. 010683

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 March 9, 2001. With regard to the issue before him, the hearing officer determined that the respondent (claimant) had disability from November 9, 2000, through the date of the CCH. The appellant (carrier) appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained an injury on _____. The carrier appeals the hearing officer's determination that the claimant had disability from November 9, 1999, through the date of the hearing. The claimant testified that he was taken off work by Dr. D because the pain in his hand became unbearable while attempting to work light duty. The carrier contends that, although the claimant was taken off work by Dr. D on November 8, 2000, Dr. D's off-work slip was not supported by medical evidence. It is well-established that, generally, disability can be established by the testimony of the claimant alone, if it is believed by the hearing officer. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992.

The hearing officer is the sole judge of the weight and credibility of the evidence presented. Section 410.165(a). It was his responsibility to resolve conflicts and contradictions in the evidence, including the medical evidence, and determine what facts have been established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). When reviewing a hearing officer's findings we will reverse only if they are so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex.

1986). We do not find the challenged determination to be against the great weight and preponderance of the evidence. Accordingly, the decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge