APPEAL NO. 010764

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 23, 2001. The hearing officer determined that the respondent's (claimant) injury of _____, caused her to have disability from March 13 through June 20, 2000, and then from June 29, 2000, to the date of the CCH.

The appellant (carrier) appeals and argues that the claimant has the ability to work light duty and that she has changed doctors in order to be taken entirely off work for a fairly mild injury. The carrier argues facts it believes support a shorter period of disability. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The claimant was right handed. It was stipulated, although most of her medical records detail injury and treatment to her left hand, that she sustained a bilateral wrist and hand injury on _____. At that time, she was working for (employer), performing work using her hands for 12-hour shifts. The claimant had surgery on her left wrist on February 9, 2001.

The claimant worked until March 13 after her date of injury, then returned for a little over a week in June 2000. It appears that medical evidence by and large did not dispute the claimant's contention that she had restrictions on her ability to work.

There was no issue brought forward over whether the employer had tendered a bona fide job offer such that an offset against temporary income benefits (TIBs) could be made in accordance with Section 408.103(e). There was evidence presented as to the treatment she received and the various levels of her off-work statements or releases. As the hearing officer noted, there were no opinions releasing her to work without restrictions. A designated doctor opined in fall 2000 that the claimant had not yet reached maximum medical improvement.

As the Appeals Panel very early held, a restricted release to work, as opposed to an unrestricted release, is evidence that the effects of the injury remain, and disability continues. Texas Workers' Compensation Commission Appeal No. 92432, decided October 27, 1992. While the hearing officer comments on the existence or omission of releases, we have also long held that a claimant's testimony alone is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). While the carrier kept emphasizing that there was evidence that the claimant could go back to light-duty work, there is no job search requirement for TIBs and, absent of finding of a bona fide job offer, no basis for reducing or eliminating TIBs for

a worker who continues to recover from an injury and whom the trier of fact determines is unable to obtain and retain employment equivalent to the preinjury average weekly wage.

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).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge