APPEAL NO. 011119
FILED JUNE 27, 2001

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 April 26, 2001. The hearing officer determined the issues of whether the appellant's (claimant) compensable injury sustained on _____, extended to and included an injury to the claimant's cervical and lumbar spine, and whether the claimant had disability from November 16, 1999, through the date of the CCH, adversely to the claimant. The claimant has appealed on sufficiency of the evidence grounds. The respondent (carrier) has submitted a response, urging that the hearing officer's determinations be affirmed.

DECISION

Affirmed.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). There was evidence in this case from which the hearing officer could determine that the claimant did not meet his burden of proving by a preponderance of the evidence that he had sustained an injury which extended to and included his cervical and lumbar spine. While the claimant made reports of low back pain at various times while being treated for his more immediate injuries, there is no diagnosis in the medical records confirming an actual low back injury, and there is no mention at all of pain in, or any diagnosis of an injury to, the cervical spine. The claimant had the burden to prove that he had disability as a result of a compensable injury. There was evidence from which the hearing officer could conclude that the claimant did not have disability after November 15, 1999, when he was released to return to work without restrictions, including the claimant's testimony that he looked for work and would have gone back to work, and a surveillance video showing the claimant moving around without apparent distress. The hearing officer's determination on the issues was not 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge