APPEAL NO. 011171
FILED JULY 11, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 3, 2001. The hearing officer resolved the disputed issue by determining that the respondent (claimant) had disability beginning on December 12, 2000, and continuing through the date of the hearing. The appellant (carrier) has appealed on sufficiency of the evidence grounds, asserting that the employer made work available for the claimant within her restrictions but that she exceeded the restrictions before being taken off work by a new treating doctor and that she changed treating doctors to one whom she knew would take her off work. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability from December 12, 2000, through the date of the hearing. The claimant testified that on _____, she injured her left upper extremity when she grabbed for a basket of icing for rolls weighing 34 pounds which was about to fall; that four days later she was seen by the company doctor, Dr. B, who examined and treated her and returned her to work with restrictions against lifting more than two pounds with her left hand and against pushing or pulling with that hand; that the employer gave her different duties but that she only worked six hours per day instead of her usual 12 hours and that she ultimately had to use her left hand in breach of the restrictions in order to keep up with the pace of production and not risk losing her job; and that on December 18, 2000, she commenced treatment with Dr. Z, who took her off work and has not released her to return to work. Dr. Z's records reflect that he diagnosed left shoulder internal derangement, left elbow internal derangement, and left wrist De Quervain's tenosynovitis, and that he took the claimant off work as of December 18, 2000, and had not released her for work as of May 1, 2001. The records of Dr. M, a referral orthopedic surgeon, state that he agrees with Dr. Z's work restrictions.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the challenged determination of the hearing officer is 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, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge