

APPEAL NO. 011219  
FILED JULY 17, 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 14, 2001. The hearing officer resolved the disputed issue by determining that the respondent (claimant) had disability from January 9, 2001, and ending May 14, 2001; that the claimant did not have disability between November 6 and 11, 2000, and between November 12, 2000 and January 8, 2001; and that the question of whether the claimant had disability between September 27 and November 5, 2000, is not ripe for resolution. The appellant (carrier) has appealed on evidentiary grounds the determination that the claimant had disability between January 9 and May 14, 2001, asserting that the medical evidence to support disability in that period is lacking. The claimant's response urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

The hearing officer did not err in making the challenged determination. The claimant testified that on \_\_\_\_\_, while working as an electrician, he injured his low back in lifting a heavy spool of cable; that he has since had low back pain with radiation into his right leg; that he has been treated conservatively thus far; that he was unable to continue working as an electrician due to the lifting and other strenuous activities associated with that work; that in November 2000 he obtained a job as a security guard earning a lower wage because he was in desperate financial straits; and that he had to quit that employment on January 8, 2001, because the client of the company insisted that he periodically walk around various areas, instead of just sitting and watching monitors, and that he could not tolerate the pain generated by the required walking. The claimant's treating doctor, Dr. A, wrote that the claimant was forced to go back to work through January 9, 2001, and that he feels "the patient should have been off work during this time" and that the claimant's condition "was irritated which prevented his recovery." Dr. D, a referral doctor, wrote on January 23, 2001, that as the claimant "has moved towards a course of functional active rehabilitation, his condition has regressed and he is having difficulty tolerating rehabilitation."

The Appeals Panel has stated with regard to disability, as defined in Section 401.011(16), that disability may be established by lay testimony including that of the injured employee (Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992); that objective medical evidence is not required (Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992); that pain can be considered to the extent that it prevents the performance of work (Texas Workers' Compensation Commission Appeal No. 91024, decided October 23, 1991); and that the 1989 Act "does not impose on an injured employee the requirement to engage in new employment while still suffering some lingering effects of his injury unless such employment is reasonably

available and fully compatible with his training, experience, and qualifications.” 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the evidence 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.

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Philip F. O’Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge