

APPEAL NO. 011237
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 9, 2001. The hearing officer resolved the disputed issue by determining that the respondent (claimant) had disability since December 20, 2000. The appellant (carrier) has appealed this determination on evidentiary sufficiency grounds. The claimant responds that the evidence is sufficient to support our affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability since December 20, 2000. The claimant, a pipe fitter, testified that he injured his low back on _____, when he bent over and picked up a saw; that he was taken by the safety manager to the company doctor, Dr. M, who saw him on three occasions in November 2000 with the safety manager present; that Dr. M released him to return to work on the first two visits but gave him restrictions on November 21, 2000; that after his injury he continued to receive pay but did not work; and that his employment and that of others was terminated by a reduction in force on December 19, 2000. He further stated that on December 8, 2000, he began treating with Dr. L because he was not improving; that Dr. L took him off work and has not yet released him to return to work; and that he has not since been able to work because of his injury.

A Work Status Report (TWCC-73) signed by Dr. L reflects that Dr. L diagnosed lumbar strain, discopathy, and radiculitis, as well as myofascial pain, and that Dr. L took the claimant off work effective December 8, 2000, to an "unknown" future date. The December 13, 2000, report of a functional capacity evaluation performed by Dr. O states that the claimant demonstrated the inability to work at any level and recommended that the claimant not work.

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 challenged determination 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:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge