APPEAL NO. 011466
FILED JULY 30, 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 May 8, 2001. The hearing officer determined that the appellant (claimant) had disability for the period from _____ through February 2, 2001, and not between that ending date and the date of the CCH.

The claimant has appealed various fact findings of the hearing officer leading to this conclusion. The claimant asserts that a finding comparing two MRIs is in error because there is only one MRI in the record. The claimant points out that neither of his treating doctors has released him to return to work. The respondent (carrier) responds that the hearing officer's evaluation of the evidence should not be set aside and that the decision should be affirmed.

DECISION

We affirm.

The hearing officer did not err in finding a very short period of disability. The record, as well as testimony from the claimant, supports the findings that the claimant changed doctors because he knew his first doctor was going to be releasing him back to work and that he told his employers on February 2, 2001, that he was ready to return. There was also contradictory evidence that the employer would not allow workers to return to work without a release, and that the claimant was made aware of this even though he asserted that he was well enough to return. The claimant said that neither doctor who treated him had released him back to work. After the claimant changed treating doctors, that doctor ordered an MRI which showed bulging at several levels and a herniation at one level.

A record from the Texas Workers' Compensation Commission indicated that the claimant has had several claims for compensation and a few involved claims of back injury. The claimant had told the first doctor who treated him (a doctor referred by the employer) that he had not had a back injury in 18 years. When the claimant related the fact that he had an MRI after he chose a treating doctor, the hearing officer asked him if he had an MRI done in connection with any prior claim. The claimant said that he had, and that such MRI also showed a herniated disc, although he could not say at what level.

The disputed fact findings of the hearing officer are supported by the documentary evidence and the testimony. Where there are conflicts, it is the duty and obligation of the hearing officer to assess materiality, credibility, weight, and relevance. Section 410.165. 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). In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge