

APPEAL NO. 011650  
FILED AUGUST 30, 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 June 22, 2001. The hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, which included her head, lumbar and thoracic areas of the back, right foot, right leg, left shoulder, and neck; and that she had disability beginning on August 10, 2000, and continuing through November 19, 2000. The claimant has appealed, contending that her period of disability extended through the date of the hearing. The respondent (self-insured employer) urges in response that the evidence is sufficient to sustain the challenged determination.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, she was injured in the employer's lunch room when the chair she was sitting in collapsed; that she had been working for the employer for approximately two and one-half weeks as a grocery store cashier; that she was released for light duty as of November 19, 2000, but the employer did not have light duty; that she then commenced working as a cashier at another grocery store at one dollar less per hour than she earned with the employer; and that the new employer terminated her employment on March 28, 2001, due to a cash shortage in her drawer which was attributed to the effects of her medication. The claimant further stated that her treating doctor, Dr. Dunlap (Dr. D), after releasing her for work, subsequently imposed additional restrictions as her condition deteriorated, and on March 30, 2001, took her off work altogether.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant contended below that "technically" she had disability from November 19, 2000, to the date of the hearing because she had not been released for any other work than light duty, and that the periods of her subsequent employment amounted to "underemployment." The evidence includes a record of Dr. D dated November 14, 2000, which releases the claimant for "full duty" as of November 20, 2000. Another record of Dr. D dated December 5, 2000, states that the claimant "is released to work w/ lifting up to 60 lbs." Dr. D's records in February and March 2001 do reflect the imposition of physical restrictions. The April 16, 2001, report of Dr. Blair (Dr. B), who examined the claimant, states that he does not think the claimant is able to return to her regular duties.

The hearing officer did not err in determining that the claimant's disability ended on November 19, 2000. The disputed issue of disability, including the duration of the disability, presented the hearing officer with a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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)). The Appeals Panel will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The Appeals Panel has previously observed that while medical restrictions or release for light duty may be the basis for a finding of disability, "such evidence alone does not mandate a finding of disability as the hearing officer is still charged with what weight, if any, to give such evidence." Texas Workers' Compensation Commission Appeal No. 980459, decided April 17, 1998. The hearing officer could consider that, notwithstanding Dr. D's restrictions, the claimant was able to work as a grocery store cashier, the type of job she had when injured, until her employment was terminated.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FRANK GATES USA, INC.** and the name and address of its registered agent for service of process is

**NILES OVERLY  
P.O. BOX 166619  
IRVING, TEXAS 75016.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge