

APPEAL NO. 012331
FILED NOVEMBER 8, 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 August 30, 2001, the hearing officer resolved the sole disputed issue by determining that the respondent (claimant) had disability from April 18, 2001, through the date of the hearing. The appellant (carrier) has appealed on evidentiary sufficiency grounds and asserts that the claimant was provided with light duty by the employer until she was terminated for absenteeism. The claimant's response urges that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

The claimant testified that after injuring her right shoulder at work on _____, she was treated and released for light-duty work; that the employer provided her with light-duty work which she performed; and that she had to stop working on March 23, 2001, to give her shoulder a rest because it continued to hurt so bad. She stated that the employer terminated her employment on April 17, 2001, for excessive absences despite the fact that she called in every day she missed work to advise the employer that she could not come in because of her shoulder pain. The employer's program director testified that although the claimant did call in as she said, she failed to provide the required documentation from her doctor for her absences. The claimant further testified that her treating doctors have not released her for return to regular work and have maintained her work restrictions.

The claimant had the burden to prove by a preponderance of the evidence that she had disability (defined in Section 401.011(16)) for the period claimed, _____ to the date of the hearing. Critical to resolution of this issue is whether the inability to obtain and retain employment is a result of the compensable injury. The carrier maintains that the evidence establishes that the employer had good cause for terminating the claimant's employment and that, in effect, she simply walked away from her employment by not providing the required physician documentation for her absences. It is well settled that the claimant's testimony alone can prove disability (Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992) and that objective medical evidence of disability is not required (Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992). The Appeals Panel has also held that a release only to light duty is evidence that disability continues and that an injured employee released only for light duty has no obligation to look for other employment (Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991; Texas Workers' Compensation Commission Appeal No. 950246, decided March 31, 1995); that pain can be considered to the extent it prevents the performance of work (Texas Workers' Compensation Commission Appeal No. 91024, decided October 23, 1991); and that termination of the employment for cause does not necessarily preclude disability (Texas

Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991; Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 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 (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. 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 true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS MERRITT
6600 CAMPUS CIRCLE DRIVE EAST #200
IRVING, TEXAS 75063.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge