APPEAL NO. 012646
FILED DECEMBER 10, 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 October 19, 2001. The hearing officer determined that the appellant (claimant) had disability beginning March 29, 2001, and continuing through May 24, 2001, as a result of a compensable injury sustained on _____. The claimant appeals the length of the disability determination on sufficiency of the evidence grounds, contending that disability continued through the date of the CCH. The respondent (self-insured) replied, urging affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

The claimant sustained a compensable injury to his right ankle and foot on _____. He was treated by several doctors over the next few weeks, including Dr. W, whom he saw on an emergency basis for an infection of his injured ankle, and Dr. N, the doctor who began treating the claimant on the recommendation of the claimant's attorney. Many of the doctors, including Dr. W, initially placed the claimant off work, but changed the claimant's off-work status to light-duty status when the employer's human relations/safety director, Mr. H, contacted the doctors and informed them that the employer had a light-duty program available for injured workers. Mr. H described the light-duty program as a return to the workplace for full pay even if there were no duties to perform. The program even included a pickup and return ride home from the workplace each day. The parties stipulated that this program did not constitute a bona fide offer of employment under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). Despite the offer of full pay with minimal or no duties, the claimant never availed himself of the light-duty program. The claimant testified that he was unable to work at all due to his injuries. Dr. N placed the claimant in a nonwork status on April 11, 2001, and has never made any changes to that status. The claimant was terminated in late April 2001 for failing to call in and maintain contact as required by the employer.

"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 determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The hearing officer analyzed the above information and correctly applied precedent from the seminal case on this question, Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, citing also the more recent decision in Texas Workers' Compensation Commission Appeal No. 992019, decided October 27, 1999. The following quote from Appeal No. 992019 sets out the legal principle involved in this case:

> We have also held 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 physical condition and generally within the parameters of his training, experience and qualifications. On the other hand, we do not believe the 1989 Act is intended to be a shield for an employee to continue receiving temporary income benefits where, taking into account all the effects of his injury, he is capable of employment but chooses not to avail himself of reasonable opportunities . . . ."

Within this legal framework, the hearing officer went on to consider the evidence of the light-duty employment available to the claimant in determining whether the claimant's inability to earn the preinjury wage was or was not the result of the compensable injury. The hearing officer determined that, considering all the medical evidence and the nature of the injury, Dr. W provided the most credible medical evidence when he projected a restricted work status for the claimant for up to six weeks after April 11, 2001. Consistent with this evaluation of the evidence, the hearing officer concluded that the claimant's disability continued through May 24, 2001.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(SELF-INSURED EMPLOYER)** and the name and address of its registered agent for service of process is

C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge