

APPEAL NO. 020359
FILED MARCH 21, 2002

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 January 22, 2002. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) did have disability resulting from the injury sustained on _____, beginning on January 5, 2001, and continuing through the date of the CCH. The appellant (self-insured) appealed, arguing that the determination that the claimant had disability is not supported by the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that she worked as a teacher's assistant and that her primary job responsibility was assisting with the physical needs of a wheelchair-bound student. The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified she was injured when she attempted to transfer the student from his wheelchair to the toilet. She testified that she was taken off work and that pain in her shoulder and back prevent her from returning to her previous position with employer. She additionally testified that she attended beauty school, which accommodated her restrictions, and that she periodically provided child care for her nieces, with assistance from her mother, during the time period she is claiming disability. There is no evidence that either of these activities allowed the claimant to earn her preinjury wage. In correspondence dated November 7, 2001, the claimant's treating doctor, Dr. B stated he was aware of the claimant's attendance at beauty school and, further, that he did not feel the claimant was able to return to work due to the extensive lifting she is required to do with the employer.

"Disability" is defined in the 1989 Act as "the inability because of a compensable injury to obtain or retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant has the burden of proving that she has disability, as well as the period(s) of disability. Texas Workers' Compensation Commission Appeal No. 941566, decided January 4, 1995. Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. A claimant's testimony alone, if believed, is sufficient to establish that an injury has caused disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989).

The self-insured cited Texas Workers' Compensation Commission Appeal No. 950785, decided June 30, 1995, and Texas Workers' Compensation Commission Appeal No. 950169, decided March 17, 1995, arguing that because the claimant demonstrated an ability to engage in work activities and was vague about the questions regarding the amounts of money earned, the disability determination should be reversed. Both of the

cited cases are distinguishable on their facts. There is sufficient evidence to support the disability determination of the hearing officer.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer judges the weight to be given to the expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, part, or none of the testimony of any witness. We will not substitute our judgment for that of the hearing officer. Nothing in our review of the record indicates that the hearing officer's determinations are so against the great weight of the evidence as to be clearly wrong and unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is:

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge