APPEAL NO. 020550
FILED APRIL 10, 2002

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 February 6, 2002, the hearing officer resolved the sole disputed issue by determining that the respondent (claimant) had disability from May 7, 2001, through August 7, 2001. The appellant (self-insured) urges error on appeal, asserting that Findings of Fact Nos. 5 and 7 "are best described as a mischaracterization of the evidence"; that Finding of Fact No. 5, to the effect that the employer did not accommodate the claimant's physical restrictions, "is a blatant falsity"; that the hearing officer examined the claimant "in a leading manner attempting to elicit the response he wanted from her," reaching an erroneous conclusion "after being unable to lead the Claimant into testifying to this herself"; and that the hearing officer failed to meaningfully analyze the evidence. Within the carrier's vituperative comments is a challenge to the sufficiency of the evidence. The claimant's response stresses the hearing officer's role as the fact finder and urges that the evidence is sufficient to support the challenged findings and conclusion.

DECISION

Affirmed.

The claimant, a school custodian described by the employer as a good and punctual employee of 11 years, injured her right shoulder on _____, while shoveling snow at a school. She said that on March 19, 2001, she returned to work with certain physical restrictions, including not lifting more than 10 pounds; that the employer made no changes in her job duties, which included sweeping, mopping, moving desks, tables and chairs, and emptying trash, and did not give her light duty; that the employer expected her to continue performing the very physical work she did before the injury; and that when she inquired of the employer whether there was "something else" for her, she was advised there was not. She said that sometime in April 2001 her doctor took her off work again and released her to return to work on April 24, 2001, with a 10-pound lifting restriction; that the employer advised her she would be given light duty and assistance but that "they never gave me light duty." The claimant further testified that on May 3, 2001, she went to the emergency room because of her shoulder pain and was off a few days with the pain; that the employer told her not to return to work without a release; that she gave her restricted release to the employer; and that although the employer indicated she would be given light duty, she was never told what the light duty would consist of and where it was to be performed so she decided to quit her job because she no longer trusted the employer. She acknowledged having stated on an exit interview form dated May 7, 2001, that she left her employment to go back to school but explained that this was just an excuse she gave for leaving because she did not trust the employer. The claimant stated that she underwent right shoulder surgery in August 2001.

In addition to the dispositive legal conclusion, the carrier challenges findings that light-duty work was not made available to the claimant and she continued to perform her

regular duties as a school custodian, and that on May 4, 2001, she telephoned the employer and advised that she could not work that day because of her right shoulder and that she was going to quit her job.

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)). Disability, defined in Section 401.011(16), can be established by the testimony of the claimant alone, if believed by the hearing officer. The hearing officer in this case had conflicting evidence before him and had to decide whether the claimant simply decided to quit her job to get more education or whether she resigned because she could not, after several attempts, get the employer to honor the restrictions in her work releases. The hearing officer could consider not only the medical evidence and the testimony of the claimant and the employer's representative, but could also, as the fact finder, draw inferences reasonably raised by this evidence. In plain words, the hearing officer could "read between the lines" in assessing the situation presented by the evidence. We do not view the challenged findings to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); 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 **TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LARRY COFFMAN
200 E. 9TH STREET
BORGER, TEXAS 79007-3628.

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Susan M. Kelley
Appeals Judge