APPEAL NO. 030927
FILED MAY 28, 2003

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 March 25, 2003. The hearing officer decided that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability beginning on December 16, 2002, and continuing through the date of the CCH. The appellant (carrier) appeals, and the claimant responds, urging affirmance.

DECISION

The hearing officer's decision is affirmed.

The carrier appeals, contending that the claimant was not credible, and also argues that the opinions of the doctor hired by the carrier to review an MRI of the claimant's shoulder, should be given more weight and credibility than the claimant's treating doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Conflicting evidence was presented on the disputed issues. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations are supported by sufficient evidence and that they are not 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 (Tex. 1986).

The carrier also contends that, "expert medical testimony is required where a claimant contends that his or her injury was caused or aggravated by an incident." We would also note that issues of injury and disability can be established based on the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). Although there was conflicting evidence, the hearing officer's decision is supported by the claimant's testimony and medical records from the claimant's treating doctor.

With respect to the hearing officer's determination of the claimant's disability, the carrier argues[1] that the claimant is not entitled to disability because "the claimant was facing a lay-off from his employment." The claimant's treating doctor has taken him off work and has not released the claimant to return to work. We have noted that even a restricted release to work is evidence that the effects of the injury remain, and disability continues. Texas Workers' Compensation Commission Appeal No. 92432, decided October 2, 1992. Additionally, a compensable injury need only be "a" cause of the claimant's inability to obtain or retain employment. Texas Workers' Compensation

[1] The carrier cites Texas Workers' Compensation Commission Appeal No. 020755, decided May 13, 2002, for the proposition that where claimant's inability to obtain and retain employment is the result of a lay-off or reduction in force, a finding of disability will not stand. However, disability was denied in that case because there was no compensable injury.

Commission Appeal No. 990655, decided May 13, 1999. Even a claimant's termination for cause does not, in itself, foreclose the existence of disability. Appeal No. 990655, *supra*. We have also held that a claimant under a light-duty release does not have an obligation to look for work or show that work was not available within his restrictions. *See* Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997, and cases cited therein. The carrier's argument is without merit.

The carrier also argued that the claimant was not entitled to disability benefits because "the claimant was also working as a truck driving instructor." The claimant testified that he had concurrent employment (as a truck driver for the employer and as a truck driving instructor for a local community college), and would probably be able to do the instructor job because it merely required him to observe others driving. He also testified that he had not earned wages at either job during the period of disability, but admitted he had been asked to observe classes so that he might later be hired to teach a bilingual truck driving class. In Texas Workers' Compensation Commission Appeal No. 990287, decided March 26, 1999, and Texas Workers' Compensation Appeal No. 981568, decided August 26, 1998, we noted that the fact that an injured employee may continue in concurrent employment does not preclude determination of disability from a compensable injury. Thus, even had the claimant continued working as an instructor, he would not be precluded from having disability.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

PRENTICE HALL CORPORATION SYSTEM, INCORPORATED
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Edward Vilano
Appeals Judge