APPEAL NO. 950436

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on January 25, 1995, (hearing officer) presiding as hearing officer. Concerning the only issue on appeal, she determined that the appellant (claimant) had disability as a result of his compensable injury only from (date of injury), to (date), and from January 31, 1994, to February 21, 1994. Claimant urges error in the hearing officer's determination of the periods of disability arguing that it doesn't credit medical evidence in the record. The respondent (carrier) urges that the evidence is sufficient to support the hearing officer and that the claimant had not sustained his burden of establishing any longer period of disability.

DECISION

The decision is affirmed.

That the claimant sustained a 3mm cut on his little finger on (date of injury), was not contested. There was conflicting evidence on whether he was terminated from his employment on (date), or otherwise left employment. In any event, on (date) the claimant went to a clinic at the direction of his employer, and the record reflects that the injury did not require suturing or stitches and that he was released to work. The claimant testified that he was not able to work and he apparently did not do so at least up to July 7, 1994, for which period he urges he is entitled to temporary income benefits. He did apply for unemployment compensation on two occasions following (date). He did not see any doctor after visiting the clinic on (date), until January 31, 1994, when he saw a (Dr. L) who, according to the claimant, placed him on three weeks of therapy. He was subsequently seen by a carrier doctor, (Dr. K), who indicated in a report dated July 11, 1994, that the claimant has a normal active range of motion in the hand and that motor nerve function is normal. He noted that the claimant has "some slight decrease sensibility on the ulnar side of the distal phalanx of the little finger." A Texas Workers' Compensation Commission-selected designated doctor certified a zero percent impairment rating (IR) and the maximum medical improvement date was found to be July 7, 1994, as set out in Dr. K's report. Other than a comment in Dr K's report that there was no reason "why he cannot be back at his regular work," and the report, dated October 14, 1994, of the designated doctor that the claimant was capable of performing unrestricted duties, the only medical report regarding ability to work is the clinic record of (date), releasing the claimant to regular duty. Although not clear in the medical records, the claimant testified that when he visited Dr. L on January 31, 1994, Dr. L prescribed three weeks of therapy.

As we have clearly held, the claimant has the burden of establishing disability and the period(s) of any disability. Texas Workers' Compensation Commission Appeal No. 93142, decided December 7, 1993; Texas Workers' Compensation Commission Appeal No. 93953, decided April 7, 1993; Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992. While medical evidence is frequently relied upon in showing disability, disability can be established by lay testimony including that of the

claimant. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989); Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Although the evidence regarding disability was not particularly well developed in this case (one of the main focuses at the hearing was the validity of a benefit review conference agreement, a matter not on appeal) there was evidence to show that the claimant was returned to work on (date). Following that date, the evidence is somewhat sparse although the claimant did state his opinion that he was not able to work but he did not go back to the clinic and did apply for unemployment compensation. He testified that Dr. L prescribed three weeks of therapy which apparently was the evidence the hearing officer found to support the disability period of January 31, 1994, to February 21, 1994, giving the benefit of any doubt to the claimant (and a period not on appeal by the carrier). Of course, it is for the hearing officer to judge the credibility of the witnesses and to give weight to all, part, or none of the testimony of any witness. Section 410.165(a); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). We simply cannot conclude from our review of the evidence of record that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Employers Casualty Co. v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Finding no error of fact or law, we affirm the decision and order of the hearing officer.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge