

APPEAL NO. 980031

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 December 12, 1997. The issues at the CCH were whether the compensable injury of the respondent (claimant) is a producing cause of his current low back problem. The hearing officer determined that claimant's compensable low back injury has not "resolved," that he did not sustain a subsequent back injury, and that he had disability from _____, through the date of the CCH. Appellant (carrier) appeals these determinations challenging the sufficiency of the evidence. Claimant responds that sufficient evidence supports the hearing officer's decision and requests affirmance.

DECISION

We affirm.

Carrier contends that the determination that claimant's compensable injury is a producing cause of his current condition is against the great weight and preponderance of the evidence. Carrier asserts that there was evidence that claimant's condition worsened in September 1997 when he felt a pop in his back while getting into his truck and that this is the cause of his current back problems. Carrier also asserts that (Dr. BR) is not credible because he had not been treating claimant prior to October 1997 and that, because claimant did not seek treatment for two months, this shows that his _____ compensable low back injury had resolved before September 1997.

Claimant testified that he hurt his back at work on _____, when he slipped while installing a toilet. He saw (Dr. MI), who said to "give it a few weeks" and returned him to light-duty work. Claimant denied that he ever told Dr. MI that he subsequently hurt his back in _____ while moving an air conditioner, although this is stated in one of Dr. MI's reports. He said he asked Dr. MI if he thought claimant could do the work if he moved to his employer's air conditioning department and that the doctor misinterpreted what he said.

In a September 11, 1997, Specific and Subsequent Medical Report (TWCC-64), Dr. MI stated that claimant "reinjured [his] back while moving [an] air conditioner." In an October 1, 1997, Report of Medical Evaluation (TWCC-69), (Dr. KA), who indicated that she is the designated doctor, stated that claimant had not reached maximum medical improvement (MMI). In a related report, Dr. KA said that claimant had marked spasm in his low back, that he had not been treated for his lumbosacral radiculopathy, that he exhibited some diminished sensation in the right L5 nerve distribution, and that she suspected a possible disc tear. In the "history" portion of her report, Dr. KA did not mention an incident regarding claimant climbing into his truck and feeling pain. In an October 21, 1997, letter, Dr. BR indicated that claimant's _____, injury is a producing cause of his current low

back condition, that claimant had described to Dr. BR his "activities in mid-September, stepping into his truck," and that Dr. BR did not feel any other incident after _____, is the sole cause of claimant's current back condition.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

After reviewing the record, we perceive no error in the hearing officer's determination that claimant's _____ compensable injury is a producing cause of his current condition. Claimant testified that his back pain never resolved after his _____, compensable injury and there was medical evidence to support the hearing officer's determination. The hearing officer judged the credibility of the evidence and decided what weight to give to the evidence. We will not substitute our judgment for hers because her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier challenges the hearing officer's determination that the claimant had disability. 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). Claimant said he still has pain and that he is unable to go back to work doing his plumbing and air conditioning work. Disability may be established by a claimant's testimony, alone. Texas Workers' Compensation Commission Appeal No. 94874, decided August 8, 1994. The hearing officer obviously found claimant's testimony to be credible. After reviewing the record, we conclude that the hearing officer's disability determination is not against the great weight and preponderance of the evidence. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge