APPEAL NO. 92186

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992). On March 30, 1992, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. She found that claimant, respondent herein, did not injure his back in the course and scope of employment. Appellant disagrees with certain findings of fact and states that its medical evidence is the only credible evidence submitted.

DECISION

Finding that the evidence of record is sufficient to sustain the decision of the hearing officer, we affirm.

Respondent worked for (employer) and stated that his duties were to take out motors and transmissions, apparently from automobiles. Appellant testified that on the date of the injury he lifted an engine weighing 1,100 pounds. Without saying how such lifting felt to his back or how it affected his back at the time, appellant described physicians he saw, general statements made to them, and surgery he had for hernias. (Appellant's hernia injuries were not contested). The closest appellant came to saying that he hurt his back by lifting an engine on _____, was when he said "yes" to the question, "did you tell (Dr. ES) that you hurt your neck, back and both groins?" He also said he described that his back was hurting and his right leg falls asleep to the doctor that both parties agreed for him to see. (See Dr. P, *infra*). He said that his own doctor, (Dr. ES), had not released him back to work. He cannot lift heavy engines now.

There was no other testimony at the hearing, nor were there any witness statements offered other than of a medical nature. The first doctor seen was (Dr. S), who records a visit of May 2, 1991, by appellant in an Initial Medical Report, which refers to pain in the groin area after lifting an engine and notes a large mass in the left inguinal region. Dr S then said, in a subsequent report, that appellant underwent surgery (hernia) on May 15, 1991. The preceding two reports were Carrier Exhibit Nos. 1 and 2. Carrier's Exhibit No. 3 is a statement from (Dr. DY), who referred to an "IME" in regard to appellant. The Benefit Review Conference report said that appellant saw Dr. DY at an ordered medical examination. Dr. DY's letter says he saw appellant on July 3, 1991, and no back problems were mentioned. Dr. DY nevertheless checked the back in his examination and found no abnormalities. Claimant's Exhibit Nos. 1 and 2 were authored by Dr. ES. On October 11, 1991, appellant saw Dr. ES, who referred in his medical note to an injury to appellant's back on June 19, 1991. Dr. ES's letter of January 29, 1992, also speaks to the same October 11 office visit but says the injury date was _____. He reports possible disc disease, says a myelogram would be useful, and relates that on October 11, appellant could not work. According to the Benefit Review Conference report, the parties agreed that appellant see (Dr. P) for evaluation, but not as a designated doctor. As reflected in Claimant's Exhibit No. 3, Dr. P saw appellant on March 24, 1992, and recorded appellant's history of lifting an engine on _____, and feeling pain in his back and inguinal

regions. Dr. P noted that appellant had some discomfort during parts of the examination and found "probable degenerative disc disease." He noted, however, that he did not have copies of certain studies to review, which would have made his review more meaningful. He believes appellant sustained a five percent impairment.

Appellant disputes Findings of Fact Nos. 4 and 5. They read as follows:

4.The first time that the claimant complained of back pain to a doctor after _____ was on October 11, 1991.

5.There is no credible evidence that the claimant injured his back on _____ while in the course and scope of his employment with [employer].

Appellant clearly testified that he told Dr. S, who he saw in May 1991, that his back "was hurting." The records of Dr. S, however, do not bear this out. In addition the letter of Dr. DY, reflecting a visit in July, 1991, is consistent with Dr. S's report that mentioned no back pain. The hearing officer is the sole judge of the weight and credibility of the evidence. Article 8308-6.34(e) of the 1989 Act. She could choose not to accept the testimony of appellant as an interested witness. Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). She could also believe that appellant's back was hurt but that he did not hurt it on _____. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). As trier of fact, she judges credibility, assigns weight, resolves conflicts and inconsistencies. Bullard v. Universal Underwriters Ins. Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The evidence in the record sufficiently supports the finding that appellant did not report back pain to a doctor prior to October, 1991.

Appellant never testified, according to the transcript, that he hurt his back when he lifted an engine on _____. His testimony was elicited as to what he told various doctors and when he told them. A recitation of events in a medical history is not proof of the truth of the matter recorded. TEIA v. Butler, 483 S.W.2d 530 (Tex. Civ. App.-Houston [14th Dist] 1972, writ ref'd n.r.e.). It is true that under Article 8308-6.34(e) of the 1989 Act, conformity to the legal rules of evidence is not necessary, and as a result, the nature of a medical history as hearsay is not controlling in a contested case hearing insofar as admittance is concerned. Notwithstanding the admissability of hearsay at contested case hearings, the hearing officer did not say in Finding of Fact No. 5 that there was no evidence, but rather that there was "no credible evidence." As stated, she is the sole judge of weight and credibility, and there was sufficient evidence, from the medical records made within one month and three months respectively of _____, and from the testimony of appellant, to support a finding that appellant's back was not injured at that time.

The findings of fact and the evidence of record sufficiently support the conclusion that the appellant did not meet his burden of proof to show that he injured his back in the

course of employment on _____.

The decision of the hearing officer is affirmed.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Philip F. O'Neill
Appeals Judge