APPEAL NO. 931133

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. §401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq.*). On September 14, 1993, a contested case hearing was held in (city), Texas, with (hearing officer). presiding, to determine whether claimant, SB, who is the respondent, was injured on (date of injury), in the course and scope of his employment with (employer) and whether the claimant had disability as a result of his injury.

The hearing officer determined that the claimant sustained a compensable injury in the course and scope of his employment, on (date of injury), and had disability as a result of that injury from (date) through the date of the hearing.

The carrier appeals both of these conclusions and related findings as against the great weight and preponderance of the evidence, recognizing that the decision essentially involved weighing facts and credibility. The carrier also asks, due to the fact that the hearing officer delayed issuance of his hearing decision over two months beyond the time period called for in the rules of the Texas Workers' Compensation Commission (Commission), that the carrier be relieved of payment of temporary income benefits resulting from the hearing officer's delay. No response was filed.

DECISION

We affirm the hearing officer's decision, and decline to relieve the carrier of payment of benefits for any period of delay in issuance of the decision.

The claimant worked for the employer, a manufacturer of trash bags, and was working for the first time on a new processing "line," with (Mr. C) on Sunday, (date of injury), from 7:00 p.m. until 7:00 a.m. Claimant said that he and Mr. C were rolling trash bags into a roll that ultimately was about four feet in diameter and weighed 788 pounds, a figure he recalled because they weighed the roll that night. At around 11:30 p.m., Mr. C had left the area, and a roll of bags was ready to be moved off the line onto a cart. Typically, two men would stand at either end and roll the bags onto a cart. Because Mr. C was not there, and because the roll had to be moved, claimant said he used a crane to assist him in moving it alone. He said that he had never used that crane before, but had used other cranes in other parts of the plant. For reasons he did not know, the crane failed and, as he tried to keep the roll from going onto the floor, he hurt his back. He said he felt immediate numbness and stinging down his legs, and in his back.

When Mr. C returned, claimant told him he had hurt his back and was advised to take a 30 minute break. The pain did not get better. Claimant said he mostly stood around the rest of his shift, and first thing Monday morning, he went directly to the office of chiropractor, (Dr. O), who saw him and took him off work. Claimant returned to the employer's location and spoke to the Director of Human Resources, (Mr. M), at around 9:30 a.m. and gave him the off work slip. Claimant said he had not worked since that date, was in physical therapy and under Dr. O's active care, and was unable to work because of continued pain.

Although claimant claimed a specific injury, he also said he felt that continual stooping and bending in his work had caused his back to become sore, so that the incident on the (date of injury) became the end of his work. Claimant's claim for compensation asserted injury through repetitive trauma, with a date of injury of (date of injury).

A letter written by Dr. O on June 15, 1993, refers to claimant as having a repetitive trauma injury to the back, and refers to him having been examined on (date of injury). Claimant said he had not been to see Dr. O on the (date of injury) and said that it was obvious that Dr. O made a typographical error since he was not open on Sundays. Dr. O's letter says that he personally talked to Mr. M and told him that claimant had a repetitive trauma injury to his back. The "off work" slip stated that claimant had a "low back injury-repetitious trauma." Two months worth of Dr. O's office notes record claimant's symptoms and muscle spasms but don't include a diagnosis as such. Dr. O continued to note, at least through the final note in the record of June 16, 1993, that claimant was not capable of work.

Mr. M agreed that claimant came to talk to him the morning of (date), although he did not say he was injured on the job, nor did he ask. Mr. M confirmed he had been given the off work slip from Dr. O. Mr. M stated that before he met with claimant, Dr. O's nurse had called and asked about claimant's health insurance, and Mr. M told her that claimant was not eligible for health insurance because he had not yet worked there 90 days. The nurse told him that claimant had been to see Dr. O the previous Friday. (This was denied by claimant).

After he talked with claimant, Mr. M said that Dr. O's nurse called back and asked him for employer's workers' compensation insurance carrier, which Mr. M provided to her. Claimant put into evidence an unsworn statement signed by seven people who "verified" that claimant hurt his back at work. Mr. M said that two of the people who signed the statement did not work for the employer until May 1993, and another had been on leave for surgery on (date of injury).

An unsigned transcribed statement by Mr. C indicated that he had no knowledge of the purported injury directly from claimant, but had found out a few days later from another person at work that claimant had injured his back.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.- Amarillo 1974, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). On the other hand, the testimony of a claimant alone is sufficient evidence to support that claimant sustained injury. *See* Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394

(Tex. 1989). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Fort Worth 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). A strain or a rupture on the job may be found to be a compensable injury. Mountain States Mutual Casualty Co. v. Redd, 397 S.W.2d 321 (Tex. Civ. App.- Amarillo 1965, writ ref'd n.r.e.).

Although there is some indication that claimant asserted a repetitive trauma injury, this is not inconsistent with the claimant's further contention that (date of injury) was the specific injury. Both claimant's testimony and his medical records support a finding of disability through the date of the hearing. There are conflicts in the record, but those were the responsibility of the hearing officer to judge and resolve, considering the demeanor of the witnesses and the record as a whole. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not find this to be the case here, and accordingly affirm the hearing officer's determinations, as based upon sufficient evidence.

While we agree that the administrative rules of the Texas Workers' Compensation Commission set up guidelines for rendering a decision, the decision does not become void, nor may the carrier be relieved of liability, when it is issued later than those guidelines provide. Texas Workers' Compensation Commission Appeal No. 92456, decided October 8, 1992. Absolving a carrier of liability for income benefits due to delay would be tantamount to ruling on claimant's eligibility for benefits for periods of time outside the scope and record of this hearing. This we decline to do. The claimant is entitled to temporary income benefits so long as he has disability and has not reached maximum medical improvement. Section 408.101(a). The carrier remains free to adjudicate changes in claimant's status for time periods not included in the hearing decision in this case.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge