APPEAL NO. 94096

On December 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* ((year) Act). The issues at the hearing were: (1) whether the respondent (claimant) sustained a compensable injury on (date of injury), and (2) whether the claimant has had disability. The hearing officer determined that the claimant was injured in the course and scope of his employment on (date of injury), and that the claimant has had disability continuously from September 27, 1993. The hearing officer ordered the appellant (carrier) to pay medical and income benefits in accordance with his decision and the provisions of the (year) Act. The carrier disagrees with the hearing officer's decision and requests that we reverse it and render a decision in its favor or reverse and remand the case for further proceedings. The claimant responds that the evidence supports the hearing officer's decision and requests affirmance.

DECISION

The hearing officer's decision and order are affirmed.

We have reviewed the hearing record, the appeal, and the response. Succinctly, while working for another employer the claimant injured his lower back, neck, and left arm in a work-related accident in (year) and had back surgery in 1990. The claimant had left cervical radiculopathy and pain which radiated into his left arm as a result of the (year) injury. The claimant was last seen by a doctor for his (year) injury in July 1993. According to a medical report, the claimant had been scheduled to see (Dr. M), the doctor who had been treating him for his (year) injury, on September 28, 1993, but the doctor cancelled that appointment due to an emergency in the doctor's office. The claimant said the appointment was for September 27th and was postponed by the doctor. The claimant said he went to Dr. M every 60 days because the doctor had to file a medical report every 60 days and to get pain pills. The claimant had returned to the work force in August 1992, and has worked for various employers. The claimant settled his (year) workers' compensation claim in May 1992, and the settlement allowed for future medical benefits to May 6, 1997.

On (date of injury), the claimant was working as a floor hand on an oil rig for his employer, (employer)., when he said he felt neck and back pain after lifting heavy "drill pipe slips" and heavy "drill collar subs." He said he did not indicate on a shift report that he was injured because he did not think his injury was serious until that evening when his fingers became numb and he had his wife call his supervisor and report that he was hurt on the job. The supervisor said that the claimant's wife did call and report that the claimant was having neck and back pain. Timely notice of injury was not an issue at the hearing. At the time of the claimed injury the claimant had been working for the employer for about one month.

On September 27, 1993, the claimant went to (Dr. W) who had initially treated him for his (year) injury. Dr. W noted that the claimant complained of pain in his right lower cervical area, right arm, and lumbar area, after having pulled slips on an oil rig. Dr. W

diagnosed "cervicolumbar strain" and "right epicondylitis, and reported that he took the claimant off work as of September 27, 1993. The claimant said he last worked on (date of injury). The claimant said that Dr. W has not released him to return to work and no release to return to work was in evidence. Dr. W also opined that "I believe that this is a new injury and it should be treated in that fashion."

The evidence established that the claimant was working for the employer on the oil rig on (date of injury), and that he was pulling drill pipe slips and lifting drill collar subs. However, the floor hand who worked with the claimant said the claimant did not lift anything heavy by himself and that he did not see the claimant get injured nor did the claimant complain of pain on (date of injury). No one else working on the rig saw the claimant get injured or heard the claimant complain of pain on (date of injury). The claimant said he complained of pain to his supervisor and to the floor hand he worked with. The supervisor said the claimant was a hard worker and that the claimant had no problems working prior to (date of injury) or on that day.

The hearing officer determined that the claimant injured his neck and lower back on (date of injury), in the course and scope of his employment and that he has had disability continuously since September 27, 1993. The hearing officer further found that the claimant thought his injury was minor so he indicated he was not injured on the (date of injury) shift report, and also found that the claimant's prior injury did not cause him to be off work on September 27, 1993, or thereafter.

The hearing officer judges the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the evidence, it is the duty of the hearing officer to consider the conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The decision of the hearing officer should be set aside only if the evidence supporting the hearing officer's decision is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The hearing officer's decision should not be set aside merely because different inferences may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The testimony of a claimant alone can establish injury in the course and scope of employment and disability. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ).

There was no need for the hearing officer to make a separate finding concerning the claimant's credibility as asserted by the carrier. It is obvious from the evidence adduced at the hearing and from the findings in favor of the claimant that the hearing officer found the claimant to be a credible witness which the hearing officer was entitled to do. The determinations of injury and disability find additional support in the medical records of Dr.

W. Having reviewed the record, we conclude that the hearing officer's determinations of injury in the course and scope of employment and disability are supported by sufficient evidence and are not against the great weight and preponderance of the evidence. Baugh, *supra*.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge