APPEAL NO. 94643

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq*. (1989 Act), a contested case hearing was held on April 7 and 13, 1994. The Hearing Officer determined that the appellant (claimant) had failed to meet his burden of proof that: (1) he timely notified his employer of an alleged injury to his hands; (2) there was any connection between the claimant's hand problem and his job; and (3) he had disability. The claimant in his appeal disagrees with these adverse findings and conclusions. Respondent urges that the decision is supported by sufficient evidence and asks that it be affirmed.

DECISION

We affirm.

The issues in the case involved the questions as to whether the claimant was injured in the course and scope of his employment, whether he gave his employer timely notice and whether he sustained disability. The case hinged largely on the claimant's testimony and his credibility. He testified that he worked for a company in Nebraska (apparently recruited in Texas) for two weeks and that his job was initially to remove intestines from slaughtered cattle and then he later worked in a freezer area. He states that he had problems with his hands from the first day and that it was a fungus that caused him to lose some of his fingernails and lose strength in his hands. He indicated that his fingernails began to fall off from the first day on the job. He acknowledged that he was issued gloves but that he did not use them as they fell off. He stated that he told his foreman but the foreman would not pay much attention to him although his duties were changed to the freezer area. He states that he was fired at the two-week point and that he subsequently (three to six weeks) obtained a ride back to (city). He went to the Texas Employment Commission and then he was sent to an emergency room of a hospital. He was apparently taken off work for a period of time. According to his testimony, he still cannot work and he still has problems with his hands, and said that it will take about two years to recover. On cross-examination, he admitted that he had stated earlier (apparently at the benefit review conference) that he had not told anyone at the employer about his injury.

An orthopedic surgeon who performed an independent medical examination gave telephonic testimony and indicated that he could not find any objective reason for the claimant's asserted inability to use his hands. He further stated that the fingers were completely flexible showing no resistance and that there was no swelling and that the skin color and temperature were good. X-rays he reviewed were normal and he did not detect any neurological problems. There was no reason for the muscles not to work in the doctor's opinion. His diagnosis of "sprain" was based solely on the history given by the

claimant, and that it was subjective and not objective. He stated it was highly improbable that this was job related, particularly on the first day.

As stated, the hearing officer determined that the claimant had not sustained his burden of proof on any of the issues raised. Our review of the complete record does not disclose any sound basis to disturb the decision of the hearing officer. We cannot conclude that his findings and conclusions were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). He assesses the credibility of the witnesses and may believe all, part, or none of the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). He does not have to accept at face value the testimony of a claimant. Bullard v. Universal Underwriter's Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). And, the hearing officer determines the weight to be given expert medical evidence. Highlands Underwriter's Insurance Co. v. Carabajal, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We do not substitute our judgment for that of the hearing officer's where, as here, there is sufficient evidence to support his determinations. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge