APPEAL NO. 980075

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §' 401.001 *et seq*. (1989 Act). On December 16, 1997, a contested case hearing was held. He (hearing officer) determined that appellant (claimant) was not compensably injured on (injury date 2) and therefore has no disability. Claimant asserts that he did injure his low back at work on (injury date 2) and that his (injury date 1) accident had injured his neck; he states he had disability and that the documents excluded at the hearing should be considered on appeal. His appeal was received on January 12, 1998, and was timely; in addition, on February 2, 1998, he forwarded a note of (Dr. T). This submission was not timely and will not be considered. The respondent (carrier) replied to claimant's January appeal by asking that the decision be affirmed.

DECISION

We affirm.

Claimant testified that he worked for Company Name (employer) and added that he had worked in the same location for many years but that the employer frequently changed. He stated that he hurt his low back on (injury date 2) by removing a brake master cylinder, which he had to reach for, in a cockpit of an aircraft. He described feeling a pull in his back with pain. He saw Dr. T on June 10, 1997, and he took claimant off work. He said he also saw (Dr. H), a chiropractor, for his low back. Claimant returned to work on September 8, 1997, part-time and then full-time about the first of October.

Claimant agreed that when he was asked in a recorded interview dated June 16, 1997, whether he had ever been in a car accident, he said no. The question was, "any auto accidents with injuries" and claimant did reply "no." He stated that he had been in a car accident on (injury date 1), and had been treated by (Dr. A) for injury to his neck in that accident.

The medical records of Dr. A also indicate that claimant saw him on (injury date 2) in a regularly scheduled visit resulting from the (injury date 1) car accident, but those records show no indication of claimant's alleged low-back injury earlier that same day at work. In addition, Dr. T, when informed of the claimant's (injury date 1) car accident by the carrier, provided a statement dated September 17, 1997, in which he referred to a recent examination of claimant where no "significant movement abnormalities [were] noted." He also said:

> It is difficult to determine this individual's level of involvement relating to the spine in view of apparent conflicting evidence and lack of authentic representation. Moreover, specific causation is in doubt due to his ongoing care for a back problem up to and including the day of his alleged work

> related accident. It seems most likely this individual's back problems are on the basis of an ongoing problem with little or no contribution related to work . . . .

An EMG report dated August 19, 1997, was called "a minimally abnormal study," with "minimal" evidence of L4 or L5 radiculopathy and "no evidence" of neuropathy, myopathy, or polyneuropathy.

The carrier had (Dr. D) review claimant's records, and he opined that no work injury occurred. He commented, contrary to claimant's assertion on appeal, that claimant had "extensive evaluation and treatment for low back and dorsal strain related to a motor vehicle accident that occurred in (injury date 1)."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He stated in his discussion that he did not find the claimant credible. Credibility, as stated, is within the province of the hearing officer to determine, and the evidence supports his observation. The hearing officer also specifically pointed out that the claimant was "not truthful" with his doctors. While a claimant's testimony alone may sufficiently support a determination that a compensable injury occurred, the hearing officer does not have to believe the claimant's account as to how his condition or injury occurred. *See* Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ), Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ), and Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied).

The claimant asks that the Appeals Panel review documents not admitted. The documents in question were not admitted because claimant was found not to have exchanged them with the carrier within 15 days of the benefit review conference (BRC) as called for by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). In addition, while the claimant explained that he only received the October 24, 1997, report of Dr. A two days before he sent it to the carrier on December 4, 1997, the hearing officer could choose not to credit claimant's account and therefor not apply Rule 142.13(c)(2) which allows exchanges to be made when documents become available more than 15 days after the BRC. The claimant's assertions that he delayed providing several statements of co-workers until he received them all could also be questioned because even the statement with the most recent date (one was not dated) was dated within 15 days of the BRC. Therefore it was not error to exclude the documents. Even if the exclusion were found to be in error, the error would not be reversible error because the medical document of Dr. A, dated October 24, 1997, primarily restated information from prior reports he had made which were in evidence; it did not relate an examination made after other reports that were admitted. Statements from co-employees basically stated that claimant was able to work between February and June 1997. There is no indication that the exclusion was reasonably calculated to cause and probably did cause rendition of an improper decision. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The evidence sufficiently supports the determinations that claimant was not injured at work on (injury date 2) and that his current neck and back conditions are not related to any incident occurring at work. Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge