APPEAL NO. 980436

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 29, 1998, with a hearing officer. With respect to the issues before him, the hearing officer determined that appellant (claimant) was injured in the course and scope of his employment on _____ (all dates are 1997), but that the compensable injury did not result in "compensable disability." The determinations regarding the compensable injury have not been appealed, and consequently, have become final under Section 410.169. The issue on appeal is disability.

Claimant appeals contending that respondent's (carrier) refusal of the claim resulted in limited medical evidence, that the hearing officer drew incorrect inferences regarding claimant helping move a friend, that a videotape of claimant's activities only show claimant engaging in normal activities as directed by his doctor, and that the hearing officer erred in admitting certain statements over claimant's objection that they were hearsay. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier responds urging affirmance.

DECISION

Affirmed.

Claimant was employed as a "molder" working with molten metals. Claimant testified, and it appears undisputed, that on September 25th, a ladle with molten metal was jarred and claimant had to jump backward, or away from the container to avoid being hit by the hot metal spilling from the container. Claimant testified that he went to a hospital emergency room (ER) that same day complaining of a back injury. A transcribed statement of (Mr. C), a coworker, supported claimant's version of the jumping back incident and that claimant complained of his back muscles hurting the next day. In a transcribed statement of (Mr. W), another coworker, Mr. W states that claimant helped him move on October 3rd and 4th, including helping move "a dresser B and a desk . . . from upstairs to downstairs . . . ." While claimant does not deny helping Mr. W move, claimant said that he carried only some light items and clothes. Claimant denies helping move the dresser and desk and suggests that Mr. W made that statement because of a personal matter involving an ex-girlfriend.

An ER medical report dated September 25th recites a history of the incident at work, gives an assessment of lumbar strain and places claimant on light duty for five days. An MRI dated November 5th, of the lumbar spine, showed minimal disc bulges at L3 through S1 "with no significant effect." Claimant subsequently changed treating doctors to (Dr. H), who in a report dated October 20th, recited a history of the work incident and diagnosed "thoracic and lumbar strain with somatic dysfunction." Dr. H took claimant off work in the

October 20th report. Dr. H repeats his diagnosis in a report dated November 7th, and in a report dated November 10th acknowledges that claimant has only "minimal disc bulges" but opines that claimant should be evaluated for "nerve entrapment syndrome." Dr. H prescribed a TENS unit which claimant states he uses regularly with beneficial results. In other reports dated November 10th, Dr. H prescribes various exercises and the correct manner of how to lift and bend. Videotapes in evidence show claimant performing activities of daily living including some lifting and bending.

The hearing officer, in his discussion, sums up the case as follows:

> It is undisputed the incident occurred. The testimony of Claimant, the statements of co-employees, and the medical records reflect Claimant had a minor back injury. The videos show Claimant is not in acute distress. The preponderance of the credible evidence establishes the Claimant was injured at work on _____. The medical records and the video indicate Claimant does not have compensable disability.

Claimant, in his appeal, emphasizes the reports of Dr. H, and contends that "[s]ince no other controverting medical evidence was presented, the hearing officer should have held that the claimant sustained a disability from October 20, 1997," as stated by Dr. H. In this case, there is conflicting evidence with an MRI showing minimal disc bulges, evidence that claimant was helping move a friend and a videotape showing claimant moving normally and performing normal activities, versus Dr. H's opinion taking claimant off work a month after his injury. Injury is defined as: "damage or harm to the physical structure of the body . . . ." (Section 401.011(26)). The fact that claimant had an accident and resultant injury does not necessarily mean that claimant has disability, as defined in Section 401.011(16). A claimant may meet his burden of proving disability through his own testimony if the hearing officer finds that testimony credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In this case it is undisputed that claimant had an accident, which resulted in an injury, and that claimant was placed on light duty for five days. The hearing officer determined that claimant did not have "compensable disability" (*i.e.* was not entitled to temporary income benefits) because he had not lost seven or more days from work.

The hearing officer in this case was obviously not persuaded that claimant sustained disability for more than seven days based on the initial medical reports, statements regarding claimant's activities, and a videotape. We have frequently noted that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association

v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer gave greater weight to the recited evidence than to claimant's testimony and Dr. H's reports, as it was his prerogative to do. We find the hearing officer's determinations on whether the injury resulted in more than seven days lost time to be supported by sufficient evidence. Similarly, how much weight to give the statements and testimony regarding claimant's helping Mr. W move was entirely up to the hearing officer as the "sole judge" of the weight to be given to the evidence. Similarly, the weight to be given to the video and whether the depicted activities were done pursuant to the instructions of Dr. H were solely within the prerogative of the hearing officer.

Claimant also contends that the transcribed statements of Mr. C, Mr. W and another statement contained "hearsay testimony" and were suspect and, therefore, should not have been admitted. Section 410.165(a) provides that conformity to "legal rules of evidence is not necessary" and that "summary procedures" are permitted. Section 410.163(b). Further, Section 410.165(b) specifically provides that a "hearing officer may accept a written statement signed by a witness." Although the complained of statements did contain hearsay, such statements are routinely admitted, at the discretion of the hearing officer, in workers' compensation procedures under the 1989 Act.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find, and consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge