APPEAL NO. 990017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 7, 1998, with the record closing on December 11, 1998. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, whether the respondent (carrier) was relieved from liability because of the claimant's failure to give timely notification of injury, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, that the carrier was relieved of liability for failure of claimant to give timely notice, and that the claimant did not have disability. The claimant appeals, urging that the great weight of the evidence is contrary to the hearing officer's decision. The carrier replies that the hearing officer's findings were supported by the evidence presented at the CCH.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in the case and it will only be briefly summarized here. Succinctly, the claimant worked for the employer at various job sites as contracts were available. On _____, he was staying with other workers at a house rented by the general superintendent, JF, and paid for by the employer while waiting on a contract that did not materialize. On _____, JF offered the workers a chance to do some clean-up work at his personal ranch to earn some money to be followed by an outing. JF testified that this was voluntary although the employer actually paid any wages since JF provided his vehicles to the employer. In any event, on the way to JF's ranch, a van owned by JF and driven by the claimant was involved in an accident with the van rolling over. Two of the six occupants required medical treatment but the claimant stated he was not hurt, that he was concerned about the others, and that he signed a medical release statement turning down medical care. The claimant stated he did not feel any pain until several days later and that about June 6, 1998, he asked JF about seeing a doctor and was told there was no money for that. JF specifically denies that the claimant ever indicated to him that he wanted to go to a doctor; to the contrary, that he, JF, asked the claimant a number of times if he was hurt at all to which the claimant always replied "no." He stated that he understood the claimant went to City 1 in late June because he had been gone for a lengthy period and wanted to see his family. JF testified that the first he knew that the claimant went to a doctor or was asserting an injury claim was August 1998. JF also stated that when he hired the claimant, he walked with a noticeable limp and advised JF that he had injured it in a motor vehicle accident at sometime in the past.

The claimant continued working for the employer and JF until late June when he returned home to City 1. He states that on June 26, 1998, he went to a doctor in State 1, and had some x-rays taken and was told he "had a bulge, a disc out of place." No medical records from this visit were in evidence. The claimant states he went to an emergency

room at a hospital in City 1 on August 6, 1998, complaining of back pain but did not have an exam or treatment because they did not have the "films" and because of transportation problems. The abbreviated record of this visit indicates claimant realized a problem "since July 1998" and was complaining of pain radiating to the left leg and difficulty closing his right hand. The claimant stated he later went to a doctor referred by the Social Security Administration but no records were offered and none were received by the hearing officer although the record was left open for this purpose. Claimant testified that he was not able to do the work he had been doing but acknowledged that he had been doing odd jobs.

From this evidence, the hearing officer determined that the claimant had failed to prove that he sustained a compensable injury in the course and scope of his employment, that he gave timely notice, and that he had disability. We have reviewed the evidence of record and cannot conclude that her determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. While there was some conflict in the evidence, this was for the hearing officer to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). As the hearing officer notes, the claimant did not indicate any injury or symptom at the time of the accident and continued working for almost four weeks before he sought any medical attention, as he claimed, when he went to State 1, in late June. Although he stated he asked JF about going to a doctor a few days after the accident, this was totally denied by JF who stated he repeatedly asked the claimant if he was injured or hurt. It is apparent the hearing officer found JF to be the more credible, which she could do in assessing the weight and credibility to be given the testimony as well as other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). While the employer was aware of the motor vehicle accident, this alone does not establish notice of a work-related injury, particularly so where there were repeated assertions of no injury, medical attention was refused, the claimant continued working for several weeks before he returned to his home in City 1 (according to JF to be with his family), and his later assertion of a work-related injury in August. From the evidence before her, the hearing officer could reasonably infer that a compensable injury on _____ had not been proven, that timely notice was not given, and that disability was not established. Since we conclude there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer on the basis indicated, it is not necessary, and we do not consider, the alternate theory of no compensable injury because of the "going and coming rule" involving course and scope in transportation injuries. Section 401.011(12).

For the reasons stated the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Christopher L. Rhodes
Appeals Judge