APPEAL NO. 990037

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 15, 1998, a hearing was held. She (hearing officer) determined that respondent (claimant) sustained a compensable back injury on _____, and that he had disability from September 10, 1998, to the date of the hearing. Appellant (carrier) asserts that the determinations that claimant sustained a compensable injury and has disability are against the great weight and preponderance of the evidence. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant had worked for (employer) for five days when, he testified, he hurt his back on _____. He stated that at about 3:00 p.m., as he was using a dolly to bring five cases of beer to a retailer, the dolly tipped sideways to the left and some beer fell and broke. He added that the ramp used was not as high as the curb at this store and the incident occurred when the wheels encountered the top three inches of curb at the end of the ramp. He also indicated that he was moving too fast. He said that he felt a tear or pain in his back as he tried to hold the dolly and keep it from tilting to the left. In trying to hold the dolly, he said he went down to one knee. He said that he told his trainer, Mr. A that he hurt his back. The doctor he saw diagnosed a back strain and sprain. He quit working for employer because he knew he would be fired because of the results of his drug test. Since a few days after the accident, he said he has helped his father's business by doing odd jobs, including driving, about 15 to 20 hours a week, for which his rent and utilities are paid.

Mr. A testified that claimant did not tell him he hurt his back, although Mr. A agreed that claimant spilled some beer while moving it by dolly on the date in question. He said that he did not see claimant go down to one knee. He said that he and the driver of the truck cleaned up the beer; he sent claimant back to the truck for more beer. He indicated that this would have occurred around noon.

All agreed that the claimant kept working that day. Claimant said he was off the next day, but that his back hurt. He called the following day and reported that he had hurt himself while working two days earlier. Ms. W an employee in personnel said that claimant did not go to the doctor she told him to go to and did not go to the correct doctor for a drug test. (There was some evidence, not in document form, that claimant tested "positive" on the drug test, but there was no issue as to intoxication.)

Mr. C testified that he was the driver of the truck on the day in question. He confirmed that the ramp could be lower than the curb and that a delivery was made to the store in question about noon.

There was significant reference at the hearing to claimant's statement that he was carrying five cases of beer on the dolly, which he referred to as King Cobra, while both Mr. C and Mr. A said the store in question did not order more than two cases of King Cobra. As stated, Mr. A confirmed that an incident of spilled beer occurred, and he also said that claimant had five or six cases on the dolly at the time. In addition, there was some reference to testimony by Mr. M indicating that when claimant called him on September 11, 1998, he transferred him to Ms. W, while Ms. W said that Mr. M called her and relayed claimant's message that he was hurt; she said that she then called claimant.

There was no issue as to timely notice, and the evidence indicated that claimant notified employer on September 11, 1998, whether he told Mr. A on _____, or not. In addition, a report of injury claimant filled out for employer indicated that he had hurt his back when he was running and fell.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She stated in her Statement of Evidence that there was some inconsistency in the statements. As the fact finder, she is responsible for reconciling those inconsistencies and conflicts in the evidence. She pointed out that claimant's version of the manner of the accident was corroborated by Mr. A. The evidence sufficiently supports the observation that Mr. A essentially agreed that an accident such as described by claimant, except insofar as the knee to the ground was concerned, did occur. The hearing officer could judge whether the evidence that not all five cases of beer were King Cobra showed a lack of credibility on claimant's part or showed nothing in view of Mr. A's corroboration of the incident. In addition, the hearing officer was provided evidence of a back sprain/strain through the medical evidence offered. The evidence sufficiently supports the determination that claimant sustained a compensable back injury.

The evidence as to disability is not as corroborated. However, claimant only saw a doctor once on September 11, 1998, giving as his reason that the carrier would not pay for any other visit. The hearing officer accepted that claimant sought medical care and testified that he could not work as he had before the accident. With the only evidence of work since the accident indicating that such work was part-time, and with the hearing officer allowed to make a reasonable inference that payment of rent and utilities was less than claimant made before the accident (especially without even any argument to the contrary by carrier), the evidence sufficiently supports the finding of disability.

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:

_____
Susan M. Kelley
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge