APPEAL NO. 990104

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 December 17, 1998. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____; that he timely reported his injury to his employer; and that he had disability as a result of his compensable injury from June 20, 1998, through the date of the hearing. In its appeal, the appellant (carrier) argues that those determinations are against the great weight and preponderance of the evidence. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a floor hand for (employer). He stated that on that date he was lifting bags of concrete that weighed approximately 100 pounds to plug a well; that after he had lifted about 12 bags of concrete, he felt a sharp pain in his low back; that he reported his injury to Mr. C, the tool pusher on the oil rig, immediately after it occurred; and that he continued to work on _____ but he did not do any further lifting. The claimant testified that he also worked on June 18 and June 19, 1998, because he had gotten a ride with the crew to the well, which was about 300 miles from his home. He maintained that he reported his injury to Mr. C for a second time on June 19, 1998, but Mr. C ignored him. The claimant acknowledged that in August 1994, he sustained a prior compensable injury to his low back; that he had a two-level fusion as a result of his 1994 injury in 1996; that he had a second surgery in 1997 to remove instrumentation from his back; that he was assigned a 23% impairment rating for his 1994 compensable injury; and that he was released to full duty, without restrictions following that injury.

The claimant first sought medical treatment for his back on July 13, 1998, at (clinic). He stated that he delayed in going to the doctor because he did not have transportation to go to the clinic and because he did not have the money to pay for treatment. At the clinic, the claimant was seen by Dr. S and Dr. N. The progress notes from the clinic contain a diagnosis of back sprain/strain and contain a history of the claimant's having injured his back lifting a sack of concrete at work on _____. On July 31, 1998, Dr. N ordered a CT scan of the claimant's lumbar spine; however, the carrier would not authorize the testing. On September 22, 1998, the claimant was examined by Dr. D. In his report, Dr. D diagnosed a lumbar strain and probable lumbar radiculopathy. Dr. D noted that the claimant had "diminished patellar tendon reflex on the right which is consistent with the right L4 radiculopathy" and recommended a lumbar MRI to rule out herniation. The carrier also denied the MRI.

The carrier introduced a written statement from Mr. C and Mr. M, the rig operator, stating that the claimant did not report an injury to either man. In addition, as the hearing

officer noted, the carrier introduced an accident report form from the employer, which stated that Dr. S called the employer on July 17, 1998, and advised them that the claimant had come to him on June 30, 1998, claiming a work-related back injury. Finally, the carrier introduced Daily Accident Report forms dated from June 11 to June 19, 1998, certifying that the claimant had not been injured while working for the employer on those days. The documents purport to be signed by the claimant; however, he denied that he had signed the documents or that he had been asked to sign any such documents while he worked for the employer. The claimant submitted a copy of his signature as an exhibit. In the discussion section of his decision, the hearing officer stated about those forms, "[t]he signatures of three of the workers, including the Claimant's, were obviously signed by the same person, and not by the Claimant."

The carrier argues that the hearing officer's injury, notice, and disability determinations are against the great weight and preponderance of the evidence. Those issues presented a question of fact for the hearing officer to resolve. Generally, injury, notice, and disability issues can be established on the basis of the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). As noted above, there were conflicts and inconsistencies in the testimony and evidence before the hearing officer. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). As such, it was his responsibility to consider the testimony and evidence before him and to determine what facts had been proven. It is apparent that the hearing officer found the claimant's testimony that he was injured lifting the sack of concrete and that he reported his injury to Mr. C on the day that it occurred more credible than the contradictory evidence presented by the carrier. In addition, the hearing officer credited the claimant's testimony that he has not been able to work because of his injury since June 20, 1998. He was acting within his province as the fact finder in so assigning weight and credibility to the testimony and evidence. Our review of the record does not demonstrate that the hearing officer's injury, notice, and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse his decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Gary L. Kilgore
Appeals Judge