APPEAL NO. 990110

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 9, 1998. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability as a result of his compensable injury from September 17 through November 7, 1998. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight and preponderance of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, he was working for (employer) operating a backhoe. He stated that he was driving the backhoe at a speed between 10 to 12 miles per hour, when the right wheel of the backhoe turned to the right and the left wheel turned to the left, causing the backhoe to abruptly come to a stop. He stated that he was thrown forward and backward as the machine "viciously jumped in the air in a bucking maneuver." The claimant testified that he had had problems with the wheels on the backhoe turning outward before and that he had complained to a mechanic for the employer but repairs were not made. The claimant explained that the tie rod of the backhoe was bent and that he had asked a service supervisor if a bent tie rod could cause the backhoe to operate as it had on _____ and was told that it could. He stated that the service supervisor was not willing to testify for him because he did not "want to bite the hand that feeds him." On cross-examination, the claimant acknowledged that he had been asked about prior workers' compensation injuries in a recorded statement and interrogatories from the carrier and that he did not provide complete information on his prior injuries in answering those questions. He explained that he was on medication during his statement and that he did not recall all of the details related to his approximately nine prior claims at either the time of his statement or when he answered the interrogatories.

Mr. M, a mechanic for the employer, testified that the claimant had complained about steering problems with the backhoe prior to _____. Mr. M stated that he inspected the backhoe and determined that there were worn brushings on the drag link. He stated that the worn brushings would have caused the backhoe to shimmy when it was operated at high rates of speed. However, he stated that it was not possible that it would have resulted in the front wheels turning in opposite directions and stopping abruptly. In addition, Mr. M maintained that the tie rod was not bent when he inspected it following the claimant's complaints. Mr. M stated that he had one of his crew members remove the tie rod from the backhoe and it was broken in half during the incident of _____. Mr. M opined that if the tie rod were bent before _____, as the claimant asserts, it would not have been possible to operate the backhoe.

The claimant testified that on September 17, 1998, Mr. G, the employer's safety supervisor, referred him to (clinic) for medical treatment, where he was followed by Dr. B. The claimant was diagnosed with lumbar and thoracic strains and a hip contusion. The claimant was taken off work at the September 17th visit. On September 28, 1998, the claimant filed a request to change treating doctors from Dr. B to Dr. N, a chiropractor, with whom he had treated for a prior injury. The Texas Workers' Compensation Commission approved the change on October 1, 1998. On September 29, 1998, Dr. B released the claimant to return to light duty, with restrictions against repetitive lifting over 10 pounds, no prolonged standing/walking longer than one hour, no pushing/pulling over 15 pounds of force, and no squatting or kneeling. Dr. N took the claimant off work at his initial appointment and kept him off work until November 7, 1998, when he released the claimant to light duty. In a letter dated October 5, 1998, Dr. N stated that "according to the facts presented, it is no doubt, in my opinion, that the injuries that [claimant] purports are congruent with the method of injury." On November 10, 1998, Dr. S examined the claimant at the request of the carrier. Dr. S diagnosed a lumbar strain/sprain, bilateral hip contusions, and a sprain/strain of the right shoulder with tendinitis and mild impingement sign. Dr. S opined that the claimant had not yet reached maximum medical improvement and recommended six to eight weeks of "uninterrupted physical therapy" and one to two weeks of work conditioning.

The carrier argues that the hearing officer's injury and disability determinations are against the great weight and preponderance of the evidence. Those issues presented questions of fact for the hearing officer to resolve. Generally, injury 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). In its appeal, the carrier emphasizes several factors which it asserts demonstrate that the claimant's testimony was not credible. There is no question that the carrier introduced information that could have been considered to adversely affect his credibility. However, the significance, or lack thereof, of that evidence on the claimant's credibility was a matter left to the discretion of the hearing officer, who is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). As the fact finder, it was the hearing officer's responsibility to consider the testimony and evidence before him and to determine what facts had been proven. It is apparent that the hearing officer credited the claimant's testimony about his injury over the contrary evidence submitted by the carrier. The claimant's testimony and the medical evidence provide sufficient evidentiary support for the hearing officer's determination that the claimant sustained a compensable injury. Our review of the record does not demonstrate that that determination is 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 the injury determination 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). Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide us a basis for disturbing the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The carrier also challenges the hearing officer's disability determination. It maintains that because Dr. B released the claimant to light duty on September 28, 1998, the evidence does not support a finding of disability. We find no merit in this assertion. The claimant testified that he was not physically able to work because of his injury when Dr. B released him. In addition, Dr. N, who became the claimant's treating doctor on October 1, 1998, took the claimant off work at his initial appointment. We note that generally a light-duty release is evidence that disability continues. Texas Workers' Compensation Commission Appeal No. 980003, decided February 11, 1998; and Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997. That is particularly true, where, as here, there is neither the assertion of nor the proof that a bona fide offer of light duty was made to the claimant.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Susan M. Kelley
Appeals Judge