

APPEAL NO. 990120

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 21, 1998. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to his lower back on or about _____, and whether he had disability resulting therefrom. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals urging that the findings and conclusions of the hearing officer were against the great weight and preponderance of the evidence. The respondent (carrier) replies that the appeal is nothing more than a revisit of the arguments made at the CCH and that there is sufficient evidence to support the decision of the hearing officer.

DECISION

Affirmed.

The claimant testified that he sustained an injury to his lower back on _____, when he was changing a tire on a rental car and the car slipped off the jack. At the time of the incident he was on a road trip as a part of his duties. Although he was somewhat inconsistent in specifics surrounding dates and when he worked and when he reported the incident, he indicated that he continued working. He stated that on April 27, 1998, he received a performance appraisal which indicated need for improvement but also stated he was doing better and if he continued, he would meet or exceed expectations. The claimant thought he first told his supervisor about the injury on April 29, 1998, and that he first went to a doctor for the injury on May 1, 1998. The claimant indicated that he did not mention it earlier as he thought it would clear up but that it did not. He also acknowledged that he had a back injury in 1994 that resolved and that he was in a motor vehicle accident in 1997 but denied he hurt his back although a report indicated back complaints. The claimant testified that he had back problems in the past and that he tries not to do things that could hurt it. He applied for short-term disability and received it.

A medical report of May 1, 1998, from his doctor mentions the tire changing incident and indicates acute low back strain with left sciatica. Subsequently, an MRI was performed which showed mild congenital narrowing of the AP diameter of the canal secondary to pedicle shortening, mild generalized annular bulging in the L2-3 and L3-4 discs that are narrowed in height, dehydration in the lower four lumbar discs, and the remainder of the spine being reported as negative, specifically no extruded disc herniation or spinal tumor. An MRI from 1994 was in evidence which showed disc degeneration with mild facet degenerative changes at L2-3 and L3-4 and facet degenerative changes, mild to moderate, at L4-5 and L5-S1. The claimant subsequently changed treating doctors to a chiropractor who took him off duty and he underwent conservative treatment and exercise which he was continuing at the time of the CCH.

As stated, the hearing officer determined that the claimant did not sustain a compensable injury on _____, and did not have disability. The hearing officer in her discussion of the case states that having listened to and observed the claimant, she did not find his testimony to be persuasive. The hearing officer is the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence. Section 410.165(a). In doing so, it is for the hearing officer to assess the weight to be given the testimony of the witnesses, including the claimant, and she may believe all, part, or none of the testimony of any given witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986); Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The claimant's testimony was somewhat vague with some inconsistency as to particulars of dates as to his actions during the post incident time frame. The claimant received a performance appraisal between the time of the tire changing incident and when he first reported an injury and subsequently went to his doctor. Although the claimant stated he was not upset by the appraisal, it did state that improvements were needed and it was urged by the carrier as the reason he subsequently reported an injury. In any event, and although the evidence gives rise to possible inferences different from those found most reasonable by the hearing officer, this is not a sound basis to reverse her factual determinations. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We cannot conclude from our review of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence, our standard of review. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Judy L. Stephens
Appeals Judge