APPEAL NO. 990127

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 29, 1998. She (hearing officer) determined that the respondent (claimant) sustained a compensable back injury; that the date of injury was _____; that the claimant gave his employer timely notice of the injury; and that he had disability. The appellant (self-insured) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant had been working as a shelf stocker for the employer for about a week. "Around" (day before injury), "as best he could remember," he said he had worked all night stocking shelves, until 11:00 a.m. the next morning when he developed pain in his back and legs. He speculated that this was the date but when his time card showed that he worked until 11:00 a.m. on _____, he agreed that that was probably the day he developed the pain. He said he told "Jy," whom he described as his lead man, that night and also "By," his foreman, when he gave the claimant a ride home after work. The claimant continued working until he saw Dr. B, his family doctor, on December 2, 1997. Dr. B's records reflect a prior back injury, chronic pain, which the claimant said was different from the pain he now experienced, and back surgery. Dr. B referred the claimant to Dr. BT for further evaluation. An MRI on December 8, 1997, disclosed lumbar herniation. A laminectomy was performed on October 9, 1998. In a brief statement of November 4, 1998, Dr. BT said the injury was caused by "repetitives [sic] trauma." On July 28, 1998, Dr. B wrote that his back symptoms "could reasonably be attributed to injury at work."

The claimant testified that he received an off-work slip from Dr. B and presented it to Mr. S, a manager. According to the claimant, he thought Mr. S would fire him if he told him that he hurt himself at work, so the claimant told him he "might have" hurt himself at home. Mr. S then gave the claimant duties as a "courtesy clerk." The claimant worked until February 3, 1998, when, he said, he was carrying an item and the pain "got too bad." The claimant also said that when he brought the off-work slip to Mr. S, he assumed Mr. S knew from "By" or "Jy" that the injury was work related.

Ms. T, another manager, testified that the claimant told her he hurt himself at home and never said at work. She admitted she did not believe she ever directly asked the claimant if he hurt himself at work and did not believe that there was a threat to his job if he said he was injured at work. Mr. G, the senior manager, testified that he could not recall if "Jy" was a lead stocker, but said the stockers reported to "By." He testified that the claimant was moved to another job, not because of any physical problems, but because of an excess of stockers. He said he first found out about this claimed injury on February 2,

1998, when a doctor's office called for an authorization to treat the claimant. When he spoke with the claimant, Mr. G said the claimant told him he thought he hurt himself at home and later said that he hurt himself carrying a package to a customer's car. He could not recall why he put January 9, 1998, on the Employer's First Report of Injury or Illness (TWCC-1) as the date of injury. He further said that "By" never told him that the claimant reported an injury and that the claimant never told him he hurt himself stocking shelves.

The case depended primarily on the hearing officer's evaluation of the claimant's credibility. The claimant had the burden of proof on each of the disputed issues and each issue presented a question of fact for the hearing officer to resolve. With regard to whether the claimant sustained a compensable injury and, if so, the date of the injury, the self-insured argues that the claimant lacks credibility for a number of reasons. It argues that the claimant has presented various dates of injury; offered competing theories of compensability, that is, a repetitive trauma or a specific trauma; that the medical evidence reflects complaints of back pain prior to the time the claimant worked for the self-insured and a condition (spinal stenosis) that could not have developed in the one week the claimant worked for the self-insured; and that the claimant admitted he lied to numerous supervisors when he told them he hurt himself at home. The claimant counters these arguments with the assertion that he has always claimed his injury was sometime around the end of November 1997, and, at the CCH, tied it to the day he worked until 11:00 a.m. He admitted he said he hurt himself at home, but said he only did this out of fear of losing his job and contends that his symptoms were new and different after this injury and not the same as his prior symptoms. Clearly this evidence was in conflict. The hearing officer, as fact finder and sole judge of the weight and credibility of the evidence, was required to resolve these inconsistencies and contradictions and determine what facts had been established. She found the claimant credible in his testimony and explanation of his conduct in reporting or not reporting his injury as work related and about his experience of pain on the job. Given the admitted discrepancies in the claimed date of injury, the hearing officer had a duty to affirmatively find a date of injury. *See* Texas Workers' Compensation Commission Appeal No. 950061, decided February 24, 1995; Texas Workers' Compensation Commission Appeal No. 94713, decided July 12, 1994. The self-insured argues that these inconsistencies in the date of injury reflect adversely on the claimant's credibility, but does not assert surprise or that it was somehow prejudiced or misled by the various dates given. The benefit review conference report refers to the claimant's position that the date of injury was "on or about" (day after injury). We consider the variance in the dates offered by the claimant minor and, noting that the parties are not bound by strict rules of pleading, *see* Texas Workers' Compensation Commission Appeal No. 982188, decided October 29, 1998, find no error in the hearing officer's determination of the date of injury in this case. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). While the evidence contained challenges to the claimant's credibility, we cannot conclude that the decision of the hearing officer, premised largely on a determination that he was credible, lacks sufficient evidentiary

support as to require a reversal. With regard to the nature of the injury, we note that the results of the MRI reflected not only stenosis, but also herniation.

The self-insured also appeals the determination of the hearing officer that the claimant timely reported his injury. *See* Section 409.001. In doing so, it does not challenge the status of "By" or "Jy" as supervisors to whom notice can effectively be given. Rather, it argues that the claimant's assertion of notice was "uncorroborated" and "directly refuted by other evidence." We agree with these characterizations, but know of no rule that requires corroboration or that the hearing officer must accept the testimony of various managers at face value over the testimony of the claimant. The hearing officer again resolved these contradictions in the evidence in favor of the claimant. Under our standard of review, we affirm that determination.

The self-insured appeals the findings of disability on the basis that there was no compensable injury. Having affirmed the findings of timely notice and a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Judy L. Stephens
Appeals Judge