APPEAL NO. 990233

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 13, 1999, a hearing was held. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable back injury on _____, and that he did not have disability therefrom; she also found that the respondent (carrier) did sufficiently and timely dispute compensability. Claimant asserts that he did sustain an injury, has had disability, and states that carrier did not dispute compensability but did dispute that he notified the employer in the Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) filed in November 1998. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) for approximately three months when, he testified, he hurt his back on _____. He stated that he told his supervisor, Mr. W, the day of the incident that he injured his back in addition to telling him that he had chest pain and a hard time swallowing. Claimant then agreed on cross-examination that he also told Mr. W that he had vomited in the restroom, was sick at his stomach, and had a knot in his chest. Mr. W testified that claimant only told him on _____, that he had the stomach problem, a problem in his chest, and was vomiting, but did not say anything about his back. There was no dispute that both claimant and Mr. W attended a meeting on November 3, 1998, in which claimant said that he had told Mr. W about a back injury and Mr. W disagreed. (Mr. W's testimony was that when Mr. O, a superintendent, told him on November 3, 1998, that claimant was reporting a back injury, he replied, "you've got to be kidding.") Mr. W also testified that between _____ and November 3rd claimant left a message on his voice mail indicating that he would not come to work that day because of kidney and bladder problems.

Claimant saw a physician's assistant (PA) on November 27, 1998, at which time the PA noted the chief complaint as "follow-up - after eating had pain in chest and vomited." The PA also stated, "knot and sharp chest pains after eating 20-30 minutes - vomits 1-2 times day hurts to swallow/breathe etc while pain is there. Slight radiation to back - mid back right behind chest - plus colicky - eases over several hours - increased after greasy food lasting longer and increased pain - not daily." Thereafter, on November 3, 1998, claimant returned to the PA and she noted a complaint of mid-back to mid-thigh pain. She added that claimant "thinks most of his pain is secondary to work - twists and pulls wood repeatedly."

There were no medical tests that showed a back injury. Claimant's work involved taking four foot by eight foot pieces of veneer, either one-eighth inch thick or one-sixteenth inch thick, from a table.

The carrier disputed by providing a TWCC-21 dated November 16, 1998. There was no dispute that this form was filed within 60 days of carrier's written notice of injury. The hearing officer determined that the following statement, read as a whole, was sufficient to dispute compensability:

> Controversion: carrier disputes indemnity and medical benefits based on its investigation that revealed that the injured employee did not report any injury to his back on _____. He reported stomach and chest pain on _____, it was not until 11/3/98 that he reported a back injury to his employer. On 10/27/98, he reported to his doctor that he had chest and stomach pain, and a gall bladder test was run and found to be normal. It was not until 11/3/98 when he came back to see his doctor that he reported a back injury. No medical documentation that he injured his back while in course and scope of his employment. Carrier reserves the right to amend.

Texas Workers' Compensation Commission Appeal No. 951174, decided August 28, 1995, reversed a determination that carrier's dispute was not sufficient and rendered that it was. That dispute stated that carrier could not verify an injury in the course and scope of employment, that the claimant did not report any injury until some four days after being terminated for no-show and intoxication, and that no medical records were received to indicate a compensable injury or lost time. Appeal No. 951174 said in reversing, "if a fair reading can reasonably be understood to set out the basis for denying the claim, it is sufficient." While claimant states on appeal that carrier only disputed that he notified the employer, a fair interpretation of carrier's statement taken as a whole would not conclude that a failure to give notice the same day was a dispute as to notice but would consider that claimant did not give notice of an injury even though he did tell the employer of other maladies. The dispute clearly "disputes" any medical or indemnity, which are the only benefits that could be paid, based on what can fairly be said to be claimant's notice of other problems but not of a back problem; thereafter, notice of the back problem makes an injury a question of credibility especially when there is not medical to support a back injury (this dispute did not say there was no medical to support disability). The hearing officer's determination that the above stated dispute was sufficient is sufficiently supported by the evidence and by the rationale of Appeal No. 951174.

Claimant maintained that he did tell Mr. W of his back on _____. Some chiropractic records do indicate that claimant's back condition was caused by his work which, as stated, entailed pulling sheets of veneer off a table. Also as stated, there were no findings of injury on any studies (claimant referenced an MRI that was normal but was not in evidence; carrier stated it had no knowledge of any MRI). While a hearing officer does not have to have objective findings to determine that an injury occurred, she can consider, as one factor, objective evidence that shows either abnormality or normality. In this instance, the hearing officer also commented, after noting no indication of injury in the studies, that claimant had an "extreme limp" at the hearing.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. While claimant and some chiropractic evidence indicated that his

back condition resulted from the workplace, the hearing officer is not obligated to accept either as conclusive. *See* Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ) and Gregory v. Texas Employers Insurance Association, 530 S.W.2d 105 (Tex. 1975). In judging credibility, she could also observe that professional opinion was based in part on the history provided. And, as stated, she could consider evidence from objective studies in evidence, or described in testimony, especially when described by the person (claimant in this case) who did not benefit from the results of the study. The evidence sufficiently supports the determination that the claimant did not show that he compensably injured his back on _____.

The hearing officer also found that claimant did not have disability. While she could choose not to believe light-duty slips provided to claimant, there can be no disability when there is an affirmed finding of no compensable injury. *See* Section 401.011(16).

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:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge