APPEAL NO. 990242

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 5, 1999, a hearing was held. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury from lifting at work on _____, and has not sustained disability. Claimant asserts that these determinations are against the great weight and preponderance of the evidence, citing medical and chiropractic evidence; claimant also states that his recorded statement was erroneously admitted and that this document is "central" to the hearing officer's disbelief in claimant's credibility; and claimant asserts that disability is ongoing. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

The only issues at this hearing were whether claimant sustained a compensable injury on _____, and whether he has disability. There was neither an issue of bona fide offer of limited duty, nor one of sole cause; no motion was made to have either added as an issue.

Claimant testified that, on _____, he hurt his low back at work for (employer). He described lifting a handle with a counterweight on it to place a small wheel (dolly) under the trailer to hold it up when it is disconnected from a vehicle. This happened about an hour before work ended. He testified to feeling back pain but not significant pain and continued work. He did not testify to significant pain that night at home, but said that the next morning he had pain.

Claimant saw Dr. W the next day; Dr. W noted "low back pain Acute Genito - Urinary Tract Infection," in taking claimant off work until October 26, 1998. Unfortunately, the record does not contain Dr. W's notes from that visit. The record does contain a "To Whom It May Concern" letter from Dr. W dated December 2, 1998, which said that on October 23, 1998, claimant complained of pain in the low back for one day "along with" frequency of urination, adding, "he stated he hurt his back at work while lifting." Dr. W also said he checked "his urine and did a blood sugar test." Dr. W found claimant to be diabetic and gave claimant prescriptions for pain, diabetes and an antibiotic "in case his pain was due to an infection of his kidneys." Dr. W does not indicate any examination of claimant's back or any referral for a possible spinal problem. He did state that he does not handle workers' compensation cases, but does not say that fact would keep him from doing a cursory examination regarding "pain in the low back from lifting."

Claimant was seen once by Dr. K on October 27, 1998, an emergency care physician where employer sent employees who had accidents. Dr. K provided a diagnosis of lumbar sprain and returned claimant to light work. Dr. F, D.C., examined claimant on October 27, 1998, and noted claimant's report of pain in the low back and "constant

moderately severe restricted movement radiating to the right upper-lateral thigh." He wrote that claimant has a "lumbar IVD syndrome with myelopathy." Claimant also saw Dr. G, D.C.

A significant part of the hearing dealt with claimant's past low back injury, and claimant's admission that he did not inform doctors who treated him of this past injury.

When carrier attempted to introduce an exhibit that consisted of claimant's recorded statement, claimant objected on the ground that the statement had not been authenticated by any signature of the person who took it or who typed it. The hearing officer correctly sustained the objection but stated that carrier could ask claimant about the statement and whether he gave it when claimant was being examined, adding that if the statement was shown to be given by claimant, he would then admit it. Thereafter, on direct examination, claimant indicated that through reviewing medical records he determined that he had had a prior back injury, "faintly" remembering that a pallet had fallen on him and he had missed "eight or nine months" of work. (Medical records indicate the injury occurred in October 1992.) An MRI from the 1992 period shows degenerative discs at L4-5 and L5-S1 along with an L4-5 disc protrusion.

Claimant had testified that he had worked for a prior employer in 1992; he said at the hearing that he did "not remember" telling his current employer that he had a prior injury when he obtained his current job. He provided a written report of injury on October 27, 1998, about his _____ incident in which he stated that he had not had "this type of injury" before. When carrier asked claimant about various points found in the statement in question on appeal, claimant agreed with the information provided in the statement, and the hearing officer admitted the document after claimant stated that his lawyer had not given him a copy of the document to look at. Claimant asserted a running objection to the document and to claimant's answering questions regarding his answers thereon. In the circumstances described, no error was made in admitting claimant's prior statement. If any error was made, it was not reversible error because the fact that claimant had a prior low back injury was also shown in medical records and claimant's testimony; in addition, claimant testified to other assertions he made (mentioned hereafter) which also show he had denied having a prior injury. There was no "central" statement or admission by claimant relating to his denial of a prior low back injury. Admission of the claimant's statement did not cause an improper decision. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

Claimant agreed that at the benefit review conference (BRC) he had denied a prior back injury but when shown past medical records he said he did have a prior back injury. Claimant also agreed that he had refused to give information about prior medical care providers or sign medical authorizations. Claimant agreed that he did not tell Dr. W, Dr. K, Dr. F and Dr. G about his prior back injury or the tests that had been done on his back at that time.

Dr. P testified by phone indicating that he did a peer review of claimant's treatment after the _____ incident. While he agreed that doctors who have examined claimant are in a better position to evaluate him, he did not say that any of the doctors involved had

used that better position to accurately evaluate the claimant. He noted that the records he examined did not indicate the doctors knew of a history of prior injury to the low back. Dr. P commented about the _____ injury:

> If there was a disk problem or a slippage acutely, that would have been immediate and severe pain . . . [emphasis added].

Dr. P also said, in answer to a question about lifting causing a sprain:

> Normally not a lift. It's normally a lift with a twist or a lift with some type of slippage. All right. Just a straight lift rarely causes true sprains or strains for that matter.

Dr. P also spoke of a "clasp knife reflex" which is a "built-in mechanism" in the body for protection. He said that when too much weight is being lifted:

> the muscles -- joints kind of cut loose and you drop the weight before you injure yourself.

He added that without this mechanism there would be "thousands of lifting injuries in gymnasiums every day."

Dr. P also addressed claimant's complaint of pain radiating to his leg, by saying that with a urinary tract infection or kidney problem there may be pain radiating to the thigh. (See the reference to "radiating movement" to the thigh noted by Dr. F, as previously mentioned.) Dr. P said such thigh pain could be from a "high disc herniation," ligament pain, or "very well could be a urinary tract infection -- or a kidney infection."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could choose to give more weight to Dr. W's very short note made at the time of claimant's visit to him in October than to Dr. W's December letter stating that claimant related his pain to an incident at work. He could also give significant weight to the question of claimant's credibility since claimant acknowledged that he did not tell his doctors of his prior low back injury, denied it initially at the BRC, denied it in the report of the _____ incident he gave to the employer, and denied it in the prior statement he gave. With this background, the hearing officer could give significant weight to certain comments made by Dr. P. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997, which said that a fact finder may determine which medical opinion should be given more weight, just as he assigns weight to lay evidence. The determination that claimant did not sustain a compensable injury on _____, is sufficiently supported by the evidence. With a supported determination of no compensable injury, there can be no disability. *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:

_____
Philip F. O'Neill
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge