

APPEAL NO. 990386

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 20, 1999, a hearing was held. The (hearing officer) determined that the respondent's (claimant) compensable injury of _____, included injury to the low back and that claimant had disability from March 3, 1998, to the date of the hearing, January 20, 1999. Appellant (carrier) asserts that the finding of a compensable back injury is against the great weight of the evidence, citing initial medical records, testimony of witnesses, and the credibility of the claimant. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. Claimant was working at a drilling operation when an accident occurred which broke his right wrist. There is no question that the right wrist injury is compensable. Claimant described tongs used in the drilling operation as hitting JH and him, causing him to fall against a bushing and then against a rail and to the floor. JH gave an affidavit in which he said that he struck claimant as the tongs were swinging and claimant "fell to the floor and hit his left shoulder; however, [claimant] did not land on his back." When he testified, JH said when the tongs hit him and he hit claimant and added, "[i]t hit me on the side, and my back facing, you know, his, so I don't know where he hit or what happened after that." JH also testified, consistently with the quoted passage, that he did not see claimant strike the bushing. JH also said at the hearing, 10 months after the accident, that he was hit in the ribs, adding, "[y]ou can barely see the bruise. It's going away" The hearing officer did not have to conclude from JH's statements and testimony that claimant did not injure his back, as carrier argues. Carrier also referred to an affidavit from JB as also showing that claimant did not injure his back, but that affidavit only says that while he was present, JB did not see the injury occur; he did see claimant "raise himself up and lean on the Kelly bushing." From this statement the hearing officer did not have to conclude that claimant did not injure his back and could understand from it that claimant did fall down in the incident in the vicinity of the bushing.

Claimant drove himself to an emergency room (ER) even though he had a broken wrist. The carrier provided ER records of (hospital) which indicate that claimant was seen on _____, with an injured right wrist. While the handwriting is not clear, it appears as if the physical exam notes state, "need ROM [range of motion] of L-5 area." Claimant was referred to Dr. B. Dr. B on March 12, 1998, noted not only a broken wrist but also claimant's complaint of having neck and shoulder pain after commenting that claimant's history included being struck on the wrist and then being "pinned at the thorax between two pipes before he was thrown to the ground, where he hit the top of his left shoulder" (By the end of _____, claimant had signed a claim form indicating that his arm, neck, and back were injured.)

Dr. Bu states in his report of November 2, 1998, that claimant was evaluated "for an independent medical examination." He took a history that indicated a blow from a tong and a "fall in which claimant landed on a metal structure injuring his lumbar spine." Dr. Bu later concluded that the injury "wherein he took a fall" caused a fractured wrist and "a lumbar sprain." Dr. Bu thereafter on January 6, 1999, provided a letter to carrier in which he said that if the history was not accurately provided then his "diagnosis and impressions" provided "may change." The hearing officer could view the latter document as not rescinding his prior statement and, in addition, could interpret the report provided at the time of the examination as providing a history of a fall as material to Dr. Bu's conclusion.

In addition to the evidence provided by JH and JB, PM testified that the structure of the platform would indicate that claimant could not have fallen against the bushing. There was other testimony about the efficacy of statements claimant obtained, such as one from JH, and the lack of coercion present when JH and JB gave the statements to carrier which have previously been discussed. We note that it is permissible for either party to obtain statements, and the hearing officer may judge them as she chooses. In the case under review, only the statements obtained by carrier were discussed to show that even with those statements, the testimony of JH, the evidence from claimant, and the medical records, the hearing officer's determination that claimant sustained a low back injury is sufficiently supported by the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Any question of claimant's credibility or that of any witness was for her, not the Appeals Panel to address. The hearing officer also could decided what, if any, weight to give an August 1998 video showing claimant trying to start a lawn mower with his left hand, pulling a starter cord.

In addition to the statement from Dr. B that claimant should not work, Dr. Br provided short opinions saying claimant could not work through February 16, 1999; the determination that claimant had disability from March 3, 1998, to the date of hearing, January 20, 1999, sufficiently supported by the evidence.

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:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge