

APPEAL NO. 990398

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 February 2, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant did sustain a compensable injury on _____ and that he had disability from September 23, 1998, to the date of the hearing. The appellant (carrier) urges that the evidence presented by the claimant to support an injury and disability was so weak that the decision of the hearing officer was against the great weight of the credible evidence, and that the decision should be reversed. Claimant urges there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

There was considerable conflict and inconsistency in the evidence presented by the parties in this case and thus, credibility and the weight to be given the testimony was the key factor. Resolving conflicts and inconsistencies in the evidence and testimony and the assessment of credibility and weight are matters generally for the determination of the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). In this regard, the hearing officer found that the witnesses on behalf of the carrier were inconsistent and non-persuasive. He was at liberty to believe all, part, or none of the testimony of any given witness (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)), and could accept and believe the testimony of the claimant over other testimony and evidence. Texas Employers' Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston [1st Dist.] 1980, writ ref'd n.r.e.).

The claimant testified that he injured his back from shoveling dirt on _____, although he did not point to a specific incident when the injury occurred. (An earlier statement to an adjuster indicated the injury occurred on a "Thursday" and _____ was a Tuesday.) That night (_____), he states he started having pain in his back. Although in pain, he went to work the next day and reported the matter to his supervisor. He stayed home for the next two days and went to a doctor on (four days after date of injury), where he was diagnosed with acute lumbar and thoracic strain, and a history reflecting pain starting four days earlier after "doing labor" and that the pain has been getting worse since that time. There are medical records that also indicate some degenerative changes and records that take, and have kept, the claimant off work because of the back injury. The claimant stated that he never had a prior back injury and that he now cannot play sports.

The carrier presented testimony from several witnesses that discount the claimant's version of events but which are also somewhat inconsistent with an earlier statement signed by the witnesses. In any event, these witnesses deny any report of a back injury until (four days after date of injury); indicate that the claimant was off duty on _____, because of a toothache; and signed a statement to the effect that the claimant complained of a toothache at 7:30 a.m. on _____, did not work, and reported an injury to his back the next day. The statement indicates that the claimant's wife called the employer about his back injury on (four days after date of injury). Employment records introduced showed that the claimant worked eight hours on _____. However, a supervisor testified that it was general policy that a worker would get paid for eight hours on any day that he had an injury. In sum, there was considerable conflict and inconsistency, and considerable confusion, in and between the statements and testimony of the witnesses and between the claimant's version and the other versions.

We have reviewed the evidence, and while there is evidence to support inferences different from those found most reasonable by the hearing officer, we cannot conclude that his findings, conclusions and decisions were so against the great weight and preponderance of the evidence as to be clearly wrong or 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). That a different result might have been reached is not a sound basis to second guess the determinations of the hearing officer who saw, heard, and observed the witnesses and weighed the evidence before him. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Finding no reversible error and that the decision is not against the great weight and preponderance of the evidence, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge