APPEAL NO. 990420

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 January 29, 1999. He (hearing officer) determined that the respondent (claimant) sustained a compensable lower back injury on _____, and had resulting disability from August 13, 1998, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant, who was 28 years old at the time of the CCH, worked as an automobile mechanic. He testified that after putting tires on a vehicle in the late morning of _____, he reached down to pick up some warranty papers and, as he stood up, he felt a pop in his back. He worked the rest of the day. Apparently, the claimant did not work the next day, a Sunday, which may have been a day off. He worked over 10 hours on August 3, 1998, and again on August 4, 1998. August 5 and 6, 1998, were normal days off. He was also given August 7, 1998, as a day off.

On August 5, 1998, the claimant saw Dr. C, D.C., who diagnosed essentially a low back strain and placed him on light duty. On the case history questionnaire given to Dr. C, the claimant checked "no" to the question "Did your accident occur at work?" He said he did this at the request of Mr. RC, a supervisor, who told him the employer had "insurance problems" and that when he returned to work, the employer would "work it out" with him. The claimant returned to work on August 8, 1998, and worked over eight hours. The next day, Sunday, was a day off and he worked almost 11 hours on Monday, August 10, 1998. He said he was able to do this work because his coworkers helped do the heavier lifting. He worked eight hours on August 12, 1998. At about 4:00 p.m. on this day, he said, he was approached by another supervisor, JC, to do a special job for a friend, which the claimant interpreted to be free work. He said at this time his back was already hurting so he refused to do the work. Mr. JC shortly thereafter clocked the claimant out and sent him home. He has not returned to work since.

The claimant next saw Dr. I, his family doctor, who suspected a disc disorder. According to the claimant, Dr. I placed him in a light-duty status and in a note of September 22, 1998, placed him in an off-work status. Dr. I referred the claimant to Dr. D, who diagnosed lumbar radicular syndrome. Dr. M), a carrier-selected doctor, examined the claimant on October 14, 1998. He diagnosed a "ligamentous and muscular strain which was superimposed on a degenerative lumbar disc problem." He concluded that the claimant "is not able to work as a mechanic . . . ."

Mr. RC testified and denied telling the claimant not to report his injury to his doctor as a workers' compensation injury. He said he helped the claimant with his work because he complained about his back hurting. Mr. JC testified that the claimant never complained to him about a sore back and he denied asking the claimant to perform free labor. He said the claimant cursed and refused to do the job he was asked to do, so Mr. JC sent him home. The owner of the business also testified that he has established an "access card" with a local hospital for work-related emergencies, and that the claimant was one of his most productive workers.

The claimant had the burden of proving he sustained a compensable injury and had disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Both of these were questions of fact for the hearing officer to decide and could be proved by the testimony of the claimant alone if found credible. The hearing officer found the claimant credible and there was unanimous medical evidence of a low back injury. Both at the CCH and on appeal, the carrier stresses that to believe the claimant, one would have to disbelieve the three carrier witnesses. Admittedly, there was some discrepancy in the evidence, and the claimant's annotation on Dr. C's records that this was not a work-related injury should give a factfinder pause in rushing to find the claimant credible. The claimant explained this. Mr. RC denied the truth of the explanation. With regard to disability, the carrier presented evidence from Mr. RC that he heard the claimant went swimming and diving on August 9, 1998, with the implication being that this caused the low back injury. The claimant denied this. Perhaps more significantly, we are presented with uncontradicted evidence that the claimant actually worked long hours after his injury and may have quit under circumstances unrelated to the injury. Again, the claimant testified that he was able to work only because he was helped in the heavy lifting. There is medical evidence placing the claimant in, at most, a light-duty work status. The hearing officer was the sole judge of the credibility of these witnesses and the other evidence. Section 410.165(a). As factfinder, he could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the testimony of the claimant and the medical evidence of an injury and a light-duty excuse, deemed credible by the hearing officer, sufficient to support both the findings of a compensable injury and disability.

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

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge