

APPEAL NO. 990484

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 11, 1999. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to a low back injury. In his appeal, the claimant argues that that determination is against the great weight of the evidence. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left knee injury in the course and scope of his employment as a driver/recycler for the self-insured on _____. The claimant testified that early in the morning on _____, he went to pick up a recycling bin of paper that was wet due to rain. He testified that the bin weighed between 70 and 80 pounds. He stated that he was walking back to the truck to empty the bin and he slipped in some water, that he lost his balance, that he twisted in an effort to regain his footing, but that he fell to the street, landing on his left knee. He stated that initially he only felt pain in his knee. He stated that he received medical treatment from Dr. C, who gave him crutches and soma compound with codeine for the pain. The claimant testified that he continued to treat with Dr. C, and his associate, Dr. CO, for about 30 days and then he changed treating doctors to Dr. B, a chiropractor. The records from Dr. C and Dr. CO only reference complaints of a knee injury. The claimant maintained that he first noticed his back pain at about the same time that he first saw Dr. B. On cross-examination, the claimant acknowledged that in his recorded statement, he told the adjuster that he had sustained a prior back injury in a slip and fall incident while he worked as a waiter in a restaurant about 15 years prior to this injury. He also acknowledged that he told Dr. H that he had not had a prior back injury.

Dr. B testified that he is the claimant's treating doctor and that he has been treating him since March 1998. Dr. B stated that the claimant had a lumbar MRI, which revealed a three to four millimeter disc protrusion, which contacts the exiting L4 nerve root and a three millimeter disc protrusion encroaching and impinging the L5 nerve root sleeve. In addition, Dr. B noted that the claimant's NCV testing demonstrated lumbar radiculopathy. When he was asked to provide an explanation for the delayed onset of the claimant's low back complaints, Dr. B stated that typically a patient focuses on the area of the body that is hurting the most. Dr. B also opined that the pain medication the claimant was taking for his knee masked his low back pain. Finally, Dr. B stated that he was relying on the mechanism of injury to support his opinion that the claimant also injured his back in the slip and fall incident of _____. He explained that lumbar discs are typically injured in twist and fall incidents such as the one described by the claimant, that the claimant began experiencing symptomatology in his low back immediately following the accident, and that he had no prior history of lumbar pain or injury.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of that injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the testimony and evidence before her and decides what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

Generally, the extent of an injury can be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the hearing officer is not bound to accept the claimant's testimony; rather, it only presents an issue of fact for her to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In this instance, the hearing officer determined that the claimant's injury did not extend to his low back in the incident of _____. In so doing, she noted that the claimant did not give consistent histories to his medical care providers in that he told some he had immediate low back symptoms after his injury and he told others that his low back problems did not start until about a month after his injury. In addition, the hearing officer emphasized that the claimant did not tell Dr. B or Dr. H about his prior back injury. The significance of the factors mentioned by the hearing officer on her determination of the claimant's credibility was a matter left solely to her discretion as the fact finder. The hearing officer was also free to discount Dr. B's opinion that the claimant injured his low back in the slip and fall incident based upon her observation that Dr. B's opinion was premised upon an inaccurate history. A review of the hearing officer's decision demonstrates that she simply was not persuaded that the testimony and the evidence presented by the claimant was sufficient to persuade her that the claimant had established the causal connection between his low back condition and the incident at work on _____. She was acting within her province as the fact finder in so finding. Our review of the record does not demonstrate that the hearing officer's determination that the claimant's compensable injury does not extend to his low back is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; accordingly, no sound basis exists for us to reverse that determination on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian Ramirez
Appeals Judge