APPEAL NO. 990490

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 5, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and thus did not have disability. The claimant appeals urging that the findings and conclusion are contrary to the evidence and the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. The respondent (carrier) urges that the evidence is sufficient to support the finding, conclusions, and decision of the hearing officer and asks for affirmance.

DECISION

Affirmed.

The claimant testified that he sustained head, back, and knee injuries on, when a metal bar fell from a garage door he was opening and struck him on his head. He states he had a 4-inch laceration and knot on his head. He remembers being on the floor after being struck but does not know if he was unconscious or if he told a doctor he saw that he was unconscious. In any event, he states that someone helped him up and that he subsequently went to the office and told the manager, PS, that he had been hit in the head by the iron bar. He was asked if he wanted to go to a doctor, at which time the claimant called his wife who picked him up and took him to an emergency room. Records from the emergency room over several visits indicate the claimant had "suffered a minor head injury" and "deep bruise (contusion)" and described the injury as "blunt head trauma, closed head injury." The claimant states he was told to stay off work for a couple of days and that he informed his employer. Except for some chiropractic records, most of the subsequent medical records were not admitted because of untimely exchange without good cause shown. The claimant states that he has experienced double vision, headaches, and dizziness, that he has a limp he did not have previously, and that he has not gone back to work.

PS testified that he heard the metal bar hit the floor on, and that he looked into the garage area and saw the claimant near the side of a Jeep and on one knee in the process of getting up. After the claimant came into his office, he states the claimant stated the bar had hit him on the head. PS testified that the claimant showed him his head, that he did not see any redness or any blood or any cuts, scrapes, or knots. The claimant's wife came to get him about 30 minutes later. PS stated he went into the garage and asked several coworkers if the claimant had been hit by the metal bar and he was told "no," and that he saw the bar on the ground on the opposite side of the Jeep from where the claimant was.

A coworker, AG, gave a statement and testified at the hearing. He stated he was with the claimant at the time of the incident, that the bar fell about three feet in front of them, and that the metal bar never hit the claimant. He stated that it would have had to hit him, too, if it hit the claimant and that the metal bar was in front of the Jeep. He testified that, although he did not know why, the claimant was subsequently observed lying on the ground and that he was rubbing his head.

The hearing officer states, in his decision, that the claimant was not credible and his testimony was fraught with inconsistencies and contradictions and that the evidence was insufficient to establish, by a preponderance of the evidence, that the claimant sustained a compensable injury on _____. Clearly, the evidence was in conflict, a matter for the hearing officer to resolve as the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence. 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). It is apparent that, in his assessment of the weight and credibility to be given the testimony of the several witnesses, he did not find the claimant's testimony persuasive, at least that it did not rise, together with the other evidence, to the preponderant level. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). That inferences different from those found most reasonable by the fact-finding hearing officer find support in the evidence does not provide a sound basis to disturb the decision. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). While a different result could have been reached under the evidence, we cannot conclude, from our review of the record, that the determinations of the hearing officer do not find any support or 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). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge