

APPEAL NO. 990793

This x-file arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 22, 1999, a hearing was held. He (hearing officer) determined that respondent (claimant) sustained a compensable low back injury on \_\_\_\_\_, and had disability from November 10, 1998, through December 7, 1998. Appellant (carrier) asserts that claimant did not promptly notify his supervisor, that claimant is not credible, and that no objective medical evidence shows injury; carrier also stated that claimant did not accept a bona fide offer of employment. The appeals file does not contain a reply.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when, he stated, he injured his back while bending over and placing two stabilizing bars in a larger bundle at one time; each bar weighed 28 pounds, according to Mr. B, claimant's supervisor. Claimant stated that he told Mr. B of the injury within about 30 minutes of feeling pain in his low back while placing the bars in the bundle. Mr. B said that claimant just told him his back was hurting, and later, when Mr. B was taking claimant to the doctor, claimant told Mr. B that his back had been hurting since his car accident in October 1998. Mr. B agreed that he heard claimant tell the plant nurse on \_\_\_\_\_, that he hurt his back putting the bars in a bundle. There was no notice issue.

Claimant's car accident in October was described as a parking accident in which a car behind him bumped the rear end of claimant's car while parking. Claimant said his car was not damaged; he went to an emergency room where he was checked for headache and dizziness. Reference to neck strain/sprain was made, but no low back or lumbar injury was mentioned at all.

Claimant first saw Dr. E, who is in the medical department of employer. Dr. E stated that his tentative diagnosis for claimant was a low back sprain and spasm. He said that claimant could do "extremely light duty."

Claimant then went to his own doctor, Dr. M, who also noted muscle spasms and took claimant off work completely for one month.

There was no issue of bona fide offer for restricted work. We note that, if there had been, a bona fide offer issue may result in decreased temporary income benefits in some circumstances when the offer is based on restrictions by a treating doctor, but not when

based on restrictions by a company doctor. See Texas Workers' Compensation Commission Appeal No. 91023, decided October 16, 1991.

Objective medical evidence is not necessary to support a determination of injury under the 1989 Act. See Texas Workers' Compensation Commission Appeal No. 92030, decided March 12, 1992. We note, in addition, that both the company doctor and Dr. M recorded spasms in regard to claimant.

Credibility was a matter for the hearing officer to determine. See Section 410.165, which states that the hearing officer is the sole judge of the weight and credibility of the evidence. Just because carrier states that Mr. B was the more credible witness does not mean that the fact finder's acceptance of at least part of claimant's testimony and his discounting of part of Mr. B's testimony was error. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied).

Claimant's testimony, the prompt medical treatment he sought (including providing a nurse with a history of a work injury), and medical evidence of injury sufficiently support the determination that claimant sustained a compensable low back injury while placing steel bars in a bundle.

The medical evidence of Dr. M sufficiently supports the finding of disability through December 7, 1998, and claimant did not appeal the determination that disability should be so limited.

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).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge