

APPEAL NO. 990810

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) on remand was held on March 8, 1999, and March 16, 1999. The case was remanded in Texas Workers' Compensation Commission Appeal No. 982983, decided February 3, 1999, for reconstruction of the record because of no tapes of the hearing being available. The issues at the original hearing, as well as on remand, were whether the appellant (claimant) sustained a compensable injury on _____; whether the respondent (carrier) was relieved of liability for the failure of the claimant to provide timely notice of his injury to the employer; whether the claimant had disability; and whether the claimant made an election of remedies barring him from benefits under workers' compensation. The hearing officer found no election of remedies and that issue is not on appeal. The hearing officer also found that the claimant did not sustain a compensable injury on _____; that the carrier is relieved of liability since the claimant did not, without good cause, timely notify the employer of an injury; and that the claimant did not have disability as a result of a compensable injury. The claimant appeals several findings of fact and conclusions of law reurging his position at the CCH and arguing that there was sufficient evidence to establish that he sustained a back injury at work on _____; that he timely notified the employer and that the employer had actual knowledge; and that he had disability from the compensable injury. The carrier responds, essentially urging that there is sufficient evidence to support the factual findings of the hearing officer, her conclusions of law and her decision.

DECISION

Affirmed.

This case hinged on credibility, with the claimant testifying that he sustained a back injury on _____, and the carrier asserting that the claimant could not have been injured the way he claims to have been injured. The claimant urges that he was a coder putting labels on boxes when he felt a "cramp" in his right leg, which eventually included his low back, as he moved a box. He testified that the employer was using a new two label system at the time requiring the movement of the boxes. He stated that his supervisor, JG, was told about his injury and was there and had actual knowledge of it. The claimant generally stated that the cramp subsided and he continued working (he worked until May 22, 1998) but that it later got worse and he went to Dr. A, in about a week. The medical report of Dr. A dated April 23, 1998, shows the claimant complained of numbness to the right leg and stuffy nose with notation of right leg numbness for 3 years on and off. There is no mention of any work-related incident. The claimant denies saying he had complained of numbness in the right leg for three years but says that he mentioned a problem with his left leg of some duration. In any event, the claimant was subsequently seen by a chiropractor who referred him to another doctor and diagnostic tests were performed including an MRI on May 20, 1998, which show a herniation at L5-S1. After a second opinion, the claimant underwent surgery on June 6, 1998. The later medical records indicate that the claimant attributed his back condition to an _____, incident at work. JG testified that he was

working with the claimant on _____, and that the claimant was assigned as a loader, not a coder, and would not have any reason to lift boxes. JG stated that he was not aware of any claimed work-related injury until late May when the claimant's wife wanted to know about workers' compensation and the claimant indicated that he was injured. JG stated he had asked the claimant if he hurt himself at work but the claimant did not answer the question. JG testified that, had an injury been reported, a report would have been made out and that he did make a supervisor's report dated May 29, 1998, after the claimant stopped working and he became aware that the claimant and his wife were claiming the injury was work related. He stated it was not possible for the claimant to have been injured as he claims on _____, and that the two-label system did not start until after _____. This was verified by (EA), a supervisor with the employer, who testified that the two-label system did not go into effect until May 5, 1998, and that they did not even have the equipment or printer to do the two-label system until after _____.

The hearing officer notes in her Decision and Order that she did not find the claimant persuasive in his testimony and that his testimony was "belied by the other evidence and chronology of events." While the testimony of a claimant alone can, if believed, establish an injury in course and scope, such testimony is not conclusive and only raises a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. A claimant's testimony does not have to be taken at face value and may be believed in whole, in part, or not at all. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Clearly, the claimant had a serious back condition from some cause that resulted in surgery in June 1998. However, the evidence to show a causal connection to the work was in considerable conflict, with the claimant testifying one way and the other evidence tending to show that the claimant's version was not correct. Resolving such conflicts in the evidence is a matter for the hearing officer (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)) and only were we to conclude that the determination of the hearing

officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb the decision of the hearing officer. Cain v. Bain , 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Section 410.165(a). While different inferences may be possible from the conflicting evidence, this is not reason enough to reverse factual findings where support by sufficient evidence. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Accordingly, the decision of the hearing officer is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge