

APPEAL NO. 990829

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 March 24, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury to his lower back on _____, and whether the claimant had disability. The hearing officer determined the claimant sustained a compensable low back injury on _____, and had disability beginning November 15, 1997, and continuing through the date of the CCH. The appellant (carrier) urges that the hearing officer's decision is against the great weight and preponderance of the evidence and should be reversed. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that he worked for employer for 11 years, driving and delivering paint. The claimant testified that his job required him to lift boxes weighing 35 to 85 pounds and drums weighing 300 pounds. The claimant stated that he injured his back on October 18, 1997, when he lifted a drum. According to the claimant, he did not lose any time from work and did not file a workers' compensation claim. The claimant testified that he sustained another injury to his low back at 4:30 p.m. on _____, when he lifted a box and "pulled something" in his back. According to the claimant, the pain he felt on _____, was different than previous back pain because he had pain and numbness down his right leg. The claimant testified that he told his supervisor, Mr. N, on _____, that he had injured his back at work. The claimant, who is 63 years old, admitted having back soreness for approximately one year prior to _____.

The claimant testified that he sought medical care for his injury at (hospital 1) on the morning of November 17, 1997. According to the claimant, he told them he was injured at work, but they would not perform an MRI because the claim was denied. The claimant testified that on December 3, 1997, he went to (hospital 2) for treatment, after three visits had a lumbar MRI performed, and was informed that he needed to have surgery. According to the claimant, he sought medical treatment at (clinic) in March 1998, and he returned to hospital 2 on a regular basis until he had a lumbar laminectomy at L4-5 on July 6, 1998. The claimant testified that all of his medical providers took him off work, and that he was unable to work from November 17, 1997, through the date of the CCH. The claimant testified that he goes to clinic once or twice a month, not for treatment, but to obtain off- work slips.

The carrier presented the testimony of Mr. N and Mr. C to support its position that the claimant did not sustain an injury on _____. According to Mr. N, the claimant did not report an injury on _____, and had complained of back problems prior to that date. Mr. N stated that he was not aware that the claimant was making a workers' compensation claim until approximately eight months later, when the claimant asked him for a statement.

Mr. C, the employer's store operations manager, testified that he knew the claimant for 11 years and that the claimant had complained of back problems. According to Mr. C, the claimant told him the week of _____, that his back hurt and, when asked what happened, the claimant said he did not know. Mr. C testified that the first time he was aware that the claimant was claiming a work-related injury was in January 1998.

The carrier asserts that the medical records do not support an injury occurred on _____, or disability. The carrier argues that the claimant has abandoned medical treatment since September 1998. The medical evidence shows the claimant sought medical treatment on November 17, 1997, at hospital 1. The records note back pain and leg pain for one year and do not reference an injury. The billing records from clinic indicate their last date of service was on September 8, 1998. The medical evidence does not indicate the claimant's work status, nor does it indicate any treatment after September 8, 1998.

The claimant had the burden to prove that he injured his low back on _____, and had disability. Despite the carrier's contention that the hearing officer transferred the burden of proof to the carrier to prove that there was no injury and disability, the record reflects the hearing officer correctly assigned the burden of proof on both issues to the claimant. The hearing officer states in the Statement of the Evidence "[t]he inconsistencies pointed out by Carrier that included the history in the medical records and prior statements of Claimant, were not sufficient to warrant a decision favoring Carrier." While inartfully worded, it does not indicate the burden of proof was misplaced and we do not find error.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer determined that the claimant sustained a compensable low back injury on _____, and had disability from November 15, 1997, through the date of the CCH. Whether the claimant sustained a low back injury on _____, was a question of fact for the hearing officer to decide. While there were inconsistencies in the medical records and testimony of the claimant, the hearing officer considered these and found in favor of the claimant on both issues. A finding of disability may be based upon the testimony of the claimant alone, and the hearing officer accepted the claimant's testimony. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. This is so, even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable low back injury on _____, and had disability from November 15, 1997, through the date of the CCH.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge