APPEAL NO. 990848

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 25, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury in the form of an occupational disease (repetitive trauma) on _____, whether he gave timely notice of injury or had good cause for not giving timely notice, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury in the form of an occupational disease on _____; that he failed, without good cause, to give timely notice; and that he did not have disability. The claimant appeals, urging several findings of fact and conclusions of law were not correct and essentially arguing that his testimony and evidence he presented established an injury, timely notice, and disability. The respondent (carrier) replies that there is sufficient evidence to support the decision of the hearing officer, that the claimant is only quarreling with the hearing officer's weighing of the evidence, and that the decision is correct and should be affirmed.

DECISION

Affirmed.

Briefly, the claimant claims he was operating a Caterpillar on _____, which he had operated for several days, when he experienced "tingling in my legs and back." He states that he called a supervisor, JB, to the job site, told him about the tingling and that he thought he needed to go to a doctor. The claimant continued working the rest of that day and the following days up to March 17, 1997, when he was sent to a doctor by the employer. According to the claimant, this doctor took him off heavy equipment and returned him to work and he continued working (with days off for medical visits and vacation) until he was terminated for unrelated causes in April 1998. The claimant stated that the doctor did not know what the problem was and that he was subsequently referred to other doctors. When a prostate problem was diagnosed, the claimant states, the carrier discontinued paying for medical expenses. About the time of his termination in April 1998, the claimant started seeing a chiropractor, Dr. L, who diagnosed lumbar discopathy, lumbar radicular neuralgia, and lumbar deep superficial muscle spasm. Dr. L, who indicated he had not seen all the medical reports on the claimant, testified that it was his opinion that the claimant's back condition was probably a result of on-the-job activity and that although the claimant had prior workers' compensation back injuries, a new injury by way of aggravation had resulted. He acknowledged that he relied on the history given by the claimant.

Although initially indicating he had no prior workers' compensation injuries, on cross-examination claimant acknowledged several prior such injuries, including an earlier back injury. Claimant also indicated that he had a lawn service business that he continued to operate and that he performed the various lawn mowing and trimming services. He also indicated that he regularly travels and goes on cruises each year although he felt that there were times that he would be on vacation but that he was not able to work because of his

back injury.

JB testified that he was the safety manager for the employer and that he would estimate that the claimant had about six on-the-job injuries claimed during JB's eight-year tenure as safety manager. He stated that he was not aware that the claimant was asserting an injury on _____, and that when the claimant mentioned the tingling sensation he was experiencing, the way he described it to JB was the "same old problem which related back to the 1993 groin incident" for which the claimant had filed a claim. There was no injury report made since no injury was reported and JB contacted the carrier to get authorization for claimant to go to the doctor. Authorization was given (apparently on the basis of the 1993 injury) and the claimant went to the doctor on March 17th.

We note the Decision and Order reflects some erroneous dates referring to 1998 rather than 1997; however, we do not find these typographical errors to materially affect the decision in this case. The hearing officer indicated that he did not find the claimant's testimony to be persuasive and found that the claimant did not sustain an injury on _____, that he did not timely report an injury without good cause, and that he did not have disability. Assessing credibility of witnesses, including a claimant, is the responsibility of the hearing officer, and a witness can be believed in whole, in part, or not at all. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Section 410.165(a). While there was a degree of conflict in the medical evidence regarding any injury and the causation thereof, since Dr. L did express an opinion that it was probably related to work, this conflict was a matter for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Given the claimant's history of job-related injuries, the chronology of events from _____, to the time of his termination for other reasons, the activity level of the claimant both at work and after termination, the length of time until a written report of injury was signed by the claimant (dated February 1, 1998), the denial by JB that

any notice of an injury of _____, was given to him, and the hearing officer's according little weight to the claimant's testimony, we cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order of the hearing officer are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge