APPEAL NO. 990980

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 8, 1999, a hearing was held. He determined that the appellant (claimant) did not have disability. Claimant asserts that medical evidence proved he had disability resulting from an injury on the job on City 2, that his testimony and that of RS was credible, and that Dr. M reports are credible. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on City 2, when, he testified, he was sleeping in the bunk just behind the driver in a tractor-trailer rig that was on a long-haul route through City 1. He said that a car that started to exit the highway came back on and hit the rear of the trailer, causing him to be thrown out of the bunk, into and over the driver and down to the well of the cab in front of the seats. He said that a net that is supposed to hold him in the bunk did not keep him from falling out. RS testified that when the car struck the right rear of the trailer, he swerved, corrected, and slammed on the brakes. He testified that claimant came flying over him, striking him on his descent.

Both claimant and RS testified that the police came and both had no explanation as to why the police said there were no injuries. Both RS and claimant testified that one tire on the rear was blown, but otherwise, neither knew of any damage to the tractor or trailer.

Claimant and RS continued on the trip in process and then returned to City 2 with another load. Claimant first sought chiropractic care on October 2, 1998. Studies from care provided at this time and thereafter include a CT scan that shows a broad posterior disc bulge at L3-4, a 4-5 mm disc bulge at L4-5, and at L5-S1 a disc bulge contacts the L5 nerve root and mildly indents the thecal sac. While carrier placed into evidence a designated doctor's report from 1997 which addressed an injury from 1996, the designated doctor in that review only mentions a problem at L5-S1 and that claimant had numbness is his "L4 distribution."

In addition to the police reports, carrier called JM, the safety director for the employer. He said that a tractor and two trailers, as was involved in this situation, with the total weight involved, would have rolled over if the maneuvers testified to had occurred; JM is not an engineer but, he testified, his training and experience as a driver qualify him to give that opinion. In addition, he said that he got no report of the cargo having shifted as he would have expected also from the description of maneuvers undertaken.

The doctor claimant saw on October 2, 1998, and thereafter was Dr. M, D.C. She took claimant off work and said that the basis for claimant's disability was an injury sustained on City 2. Carrier introduced a letter Dr. M prepared in regard to RS that said the

same thing as a letter she prepared relative to claimant. Claimant objected on relevancy and timely exchange grounds. Carrier noted that it received the letter related to RS from counsel for claimant and that it is identical to a report claimant introduced on his own behalf. The hearing officer then overruled the objection and admitted the document from Dr. M relating to RS. Since claimant has not assigned error to the admission of this document in his appeal, we will comment no further as to admissibility.

Claimant testified that he did not seek medical help for a period of time because he was afraid of losing his job. He agreed that he had a prior injury and did not lose his job at that time. He agreed that he worked until December 17, 1998.

In addition to the two letters from Dr. M relative to RS and claimant that were exactly alike, Dr. Mi, D.C. performed an examination of claimant on behalf of the carrier on February 1, 1999. He noted that Dr. M attended the examination; he also stated in his report:

> In filling out the workers comp questionnaire and history form, questions regarding prior workers comp injuries were originally written by the patient as yes then it was observed that [Dr. M] told the patient to change the answer to no in regards to prior workers comp injuries.

The hearing officer is the sole judge of the weight and credibilty of the evidence. *See* Section 410.165. While the hearing officer was given information by both claimant and RS that indicated claimant tumbled out of the bunk on City 2, and medical opinion by Dr. M that said such event was the basis for claimant's disability, he was also provided information from the police report that said there were no injuries and from claimant's own testimony that he received no chiropractic care until October 2, 1998, and that he kept working until December 17, 1998. In addition, the hearing officer was provided the opinion from JM that manuvers as described by RS would have resulted in more truck damage than a blown tire, and Dr. Mi's report that said Dr. M effected a change in part of claimant's history. As to the latter, there was a letter in evidence from claimant complaining to Compliance and Practices about the report of Dr. Mi that said Dr. M had effected a change in the history. There was no evidence that a complaint had been made to the Board of Chiropractic Examiners.

These facts and opinions provided conflicting evidence which is the responsibility of the hearing officer to resolve. *See* Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The hearing officer could believe that claimant has sustained some injury at some time and not believe that it occurred in the way that he and RS testified. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel will not overturn the decision of the hearing officer on a factual determination unless it is against the great weight and preponderance of the evidence. This case presented evidence indicating disability and evidence that raised reasonable questions as to disability. In that regard, the determination of no disability is not against the great weight and preponderance of the evidence. (We note that the hearing officer used the word "capacity" in a finding of fact; that word is not

part of the 1989 Act relating to disability. The hearing officer also concluded that there was no disability, and the evidence sufficiently supports that conclusion.)

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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Thomas A. Knapp
Appeals Judge

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Tommy W. Lueders
Appeals Judge