APPEAL NO. 990992

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 12, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) did not sustain a compensable injury on _____, and therefore had no disability; she also determined that the respondent (carrier) adequately disputed compensability of the injury. Claimant asserts that the carrier's dispute was inadequate and that he did sustain a compensable injury. Carrier replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, as a cable installer. He testified that on _____, he hurt his low back when he and others moved 30 pieces of plywood; he stated that after finishing, it felt as if he pulled something in his back; his position was that this was a case of repetitive physical trauma. He said that he told (CK), his supervisor, that he pulled his back. He then saw Dr. G on December 17, 1998. A patient's form claimant provided to Dr. G on December 17, 1998, said that claimant did not know how or when he injured himself. Dr. G said little about claimant's injury on that date, but in a letter of February 16, 1999, said that claimant first saw him on December 17, 1998, and that he presented with a history of low back pain "related to a lifting injury" at work. Dr. G also referred to "a lifting injury on _____ is compatible with the medical findings."

Claimant had seen Dr. P on December 2, 1998. At that time Dr. P noted that claimant reported a "recent episode of low back pain." Dr. P then said he had no film for an x-ray and had claimant return on December 15, 1998, at which time an x-ray of the low back was made; Dr. P then noted that the x-ray was done "for continued problems with back pain[;] patient reports numbness and tingling in legs[,] onset recently with lifting plywood at work." A lumbar myelogram/CT scan was done on January 5, 1999. It showed "soft tissue attenuation fills the left lateral recess and neural foramen at L5-S1. This completely effaces the left S1 nerve root." It also showed that a facet articulation at L5-S1 was abnormal, adding, "[e]tiologic considerations for this finding would include long standing remote trauma with bone remodeling or a congenital defect."

There was no medical opinion as to whether the "long standing" aspect of the second comment contributed to, caused, or did not cause, the soft tissue problem regarding the S1 nerve root. However, in addition to the medical tests just described, carrier provided the statements of Mr. C and Mr. A, employees of employer. Mr. C said that claimant had complained of leg pain in the period of September to November 1998. Mr. A said that claimant complained of back pain in the last stages of three contracted jobs, said to be "(Company No. 1), and (Company No. 2)" (the (Company No. 2) job was in December 1998, when claimant asserted an injury).

In addition, there was a disagreement involving claimant that resulted in his termination on December 30, 1998. CK testified that he is a manager and that claimant did not tell him of any job injury in December, just that he had a doctor's appointment on December 15th; nothing was said regarding work but claimant did report restrictions imposed as to lifting. Mr. M testified that he is the operations manager; he said that claimant told him after seeing the doctor that he had a problem stemming from childhood. Ms. Mc, an administrative manager for employer, testified that claimant had told her he had a childhood deformity. None of the employees named herein said that they were told of a work-related injury prior to January 1999, when claimant filed a claim, which was after his termination.

Also at issue at the hearing and on appeal was the dispute of the carrier as to compensability. The carrier filed its dispute timely, but it said:

> Carrier states injury occured [sic] in the course and scope of employment. The claminant [sic] didn't report a work related injury until 1/5/99 and fell [sic] the claimant has filed a spite claim. Carrier also feels the clmt has a pre-existing condition and his back problems are not work related.

Carrier argued that in addition to the many mistakes in typing that are obvious, it also mistakenly left out the word, "no" after the word, "states." The hearing officer explained that taking the quoted passage as a whole, the carrier did dispute compensability; she did not specifically cite the missing "no," but rather the last independent clause which said, "his back problems are not work related." *See* Texas Workers' Compensation Commission Appeal No. 961887, decided November 12, 1996, which cited Texas Workers' Compensation Commission Appeal No. 93302, decided June 2, 1993, which said that the phrase "is not work related" was sufficient.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In resolving conflicts in the evidence, she may choose to believe part, none, or all of what a witness says, including the claimant. *See* Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). In this instance she could consider the medical studies as indicative of a chronic condition about which the claimant had previously complained (believing Mr. C and Mr. A) and about which (believing Dr. P) medical evidence also showed prior complaints. The determinations that the carrier sufficiently disputed compensability and that the claimant did not show that he sustained a compensable injury on _____, are sufficiently supported by the evidence. (We note that the hearing officer made two findings of fact and a conclusion of law that said claimant did not injure himself at work. In view of these determinations, we consider a comment in the next to last paragraph of the hearing officer's Statement of Evidence that said claimant did prove there was a work injury to be an error.) With no compensable injury, there can be no disability. *See* Section 401.011(16).

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).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge