

APPEAL NO. 991138

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 May 4, 1999, with the record closing on May 11, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability from September 11, 1998, through the date of the CCH. The appellant (carrier) appeals, urging that the claimant failed to show by a preponderance of the credible evidence that he sustained a compensable injury with resulting disability, and requests that the decision be reversed. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, an air conditioning technician, testified that he sustained a low back injury on \_\_\_\_\_, when he went to service an air conditioning unit and slipped and fell on uneven ground, landing on his left side. The claimant testified that he continued working and within a week sought medical treatment with a chiropractor, Dr. S. Within a week of the injury, the claimant stated that in casual conversation he told his supervisor, Mr. SH, and the person in charge of workers' compensation, Ms. D, that he was injured at work. The claimant testified that Ms. D asked him if he wanted to make a report of injury and he declined, stating that he thought he would be alright and was only in a little pain. The claimant testified that his back pain worsened until he could no longer work on September 11, 1998, and on January 14, 1999, he had spinal surgery, a laminectomy and three-level fusion. According to the claimant, he has been unable to work since September 11, 1998, due to his back injury.

The claimant presented the testimony of Mr. SH and Mr. JH, the director of auxiliary services. Mr. SH testified that the claimant told him that he had slipped and fallen, that his hip was sore, and said he thought he would be fine. Mr. SH testified that at that time, he did not know he needed to fill out paperwork. Mr. JH testified that in September 1998, he began handling the workers' compensation claims for employer, after Ms. D took a different position. Mr. JH testified that on September 29, 1998, the claimant came into his office, said that he had been injured at work, and said he had been off work since September 11, 1998. Mr. JH stated that after the handling adjuster, Ms. O, denied the claim, he performed his own investigation, taking statements from Mr. SH, Ms. D, and Mr. G. Mr. JH testified that upon completion of his investigation, he called the Texas Workers' Compensation Commission and asked how to get an appeal of the carrier's denial.

The carrier presented the testimony of Ms. O to support its position that the claimant did not sustain an injury on \_\_\_\_\_. According to Ms. O, she spoke to Mr. JH and

Mr. SH the first week in October, and they stated that they were not aware that the claimant had sustained a workers' compensation injury. Ms. O testified that based on these employer statements and the medical records she denied the claim, but the employer subsequently changed its stance and submitted written statements indicating that the claimant did report that he sustained an injury on \_\_\_\_\_. The carrier argued that the medical evidence does not support an injury: Dr. S's reports did not consider the claimant's back condition to be work related until October 1998, after two months of treatment; Dr. L records indicate that the claimant's condition was not related to any specific accident or injury; and an intake questionnaire which asked the nature of the injury was not completed by the claimant.

The claimant had the burden to prove that he injured himself as claimed on \_\_\_\_\_. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

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 injury on \_\_\_\_\_, and had disability from September 11, 1998, through the date of the CCH. After considering the inconsistencies in the medical records and conflicting evidence, the hearing officer found the claimant's testimony credible, and that the totality of the evidence established that the claimant injured himself while at work on \_\_\_\_\_. The claimant testified that he was unable to work due to the injury beginning September 11, 1998. Additionally, on September 30, 1998, Dr. S took the claimant off work pending the outcome of his lumbar injury. 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. We find there was sufficient evidence to support the determinations of the hearing officer that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability from September 11, 1998, through the date of the CCH.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge