APPEAL NO. 991150

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 April 28, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, whether he timely reported an injury, and whether he sustained disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____; that he did not timely report, without good cause, the asserted injury; and that he did not have disability. The claimant appeals, urging that he did sustain an injury; that he reported it to his supervisor who lied and, further, was a drug user and dealer; and that he does have disability from the _____, injury. The respondent (carrier) replies that there is sufficient evidence to support the findings and conclusions of the hearing officer and urges that the decision should be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the pertinent evidence in this case and we will only summarize it here. The claimant, a 65-year-old gentleman, testified that he hurt his back when he attempted to lift a large roll of wire into a bin on _____. He states he immediately told a coworker (his son-in-law) and then reported it to his supervisor, MA. He states he continued working, taking some over-the-counter medications, and did so during June, July, and August. He quit work two times because of disagreements about work sharing, the last time being August 21, 1998. When he was refused reemployment following the second instance, on August 21, 1998, he subsequently claimed he was injured on _____. He stated his condition got worse when he stopped working. He submitted three statements, two of which were from relatives, attesting to a back injury. On September 1st he talked to the office manager, RH, who set up a doctor's appointment. He saw Dr. F on September 4th, whose notes reflect that claimant had a "back strain, minor, degenerative back." Dr. F also notes return to work but that the claimant was not satisfied regarding his back condition and that he did not want to go back to work. The claimant was subsequently diagnosed with misalignment of his vertebrae.

RH testified that the first the employer was told of an injury was after claimant was refused reemployment after the second instance in late August 1998, that the claimant first told her he sustained an injury in _____ on alleged injury, and that a report by the employer was immediately made. MA testified and stated that the claimant never reported an injury to him, that he was not aware of any injury and did not see any evidence of an injury as he worked with the claimant in June, July, and August. He first was aware that an injury was being claimed after the claimant was refused reemployment in late August.

The hearing officer did not find the claimant's testimony and evidence persuasive and determined that a compensable injury had not been proven; that timely notice of an

asserted injury was not given, without good cause; and that, consequently, there was no disability. As the sole judge of the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer was not obligated to accept the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Nor was the hearing officer required to give any particular weight to the statements submitted by the claimant. This is particularly so where there is probative evidence in direct conflict therewith and presents the hearing officer with the responsibility of resolving any conflict and inconsistencies. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Only were we to conclude, from our review of the evidence, 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 would there be cause to reverse her decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Not finding that to be the case here, we affirm the decision and order.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Judy L. Stephens
Appeals Judge