APPEAL NO. 991288

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 20, 1999. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not timely report his alleged injury to his employer, without good cause for his failure to do so; and that he did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that those determinations are against the great weight of the evidence and asks that we enter a decision in his favor on each issue. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

There was considerable conflict in the evidence. The claimant testified that on October 29, 1998, he was working as a framer for a company owned by Mr. R, the claimant's cousin. The company constructed iron frames in movie theaters, which were used to support the movie screen. The claimant testified that on _____ he was working in (City 1) with Mr. M. He stated that they were lifting angle iron to take it into the theater to construct the frame and he felt a sharp pain in his low back. He testified that later that day, the entire crew was lifting a frame to put it in place on the wall and he was not able to hold onto the rope he was using to lift it because of the intense pain in his back. The claimant testified that he reported his injury to Mr. R on the day that it happened. He maintained that he specifically told Mr. R that his back was sore and that he had injured it lifting in City 1. The claimant testified that he continued to work for about a week after his injury and then he had to stop working because of unbearable back pain. He testified that he has not worked since November 6, 1998, because of his compensable injury. On cross-examination, the claimant acknowledged that he had been injured carrying a motor when the employer was working in (City 2) several months before he began working in City 1; however, he insisted that he had injured his head at that time and that he did not injure his back in that incident.

The claimant first sought medical treatment on December 7, 1998, from Dr. R. He explained the delay in seeking medical treatment by stating that he had to investigate and learn the identity of the carrier on his own before he could seek treatment. In his Initial Medical Report (TWCC-61), Dr. R diagnosed lumbar sprain/strain. The claimant introduced off-work slips from Dr. R dated February 22, 1999, and March 17, 1999, respectively, indicating that the claimant was "unable to return to work until further notice."

Mr. G, who is a cousin of both the claimant and Mr. R, testified at the hearing that he was working with the claimant on _____, and that he was standing next to the claimant on the platform when the frame fell, injuring the claimant's back. On cross-examination, Mr.

G testified that the claimant had been complaining about back pain since his injury in City 2, several months before they began working in City 1. Mr. G also stated that the crew had a meeting with Mr. R in the evening after the claimant's injury on _____ and that Mr. G reported to Mr. R at that meeting that the claimant had injured his back working that day.

Mr. Q also testified that the claimant injured his back working in City 1, when the frame that the crew was attempting to lift into place fell. Mr. Q stated that he knew the claimant had been injured in that incident because he called out in pain at that time.

Mr. M testified that he did not witness any injury to the claimant while they were working together in City 1. Mr. M maintained that the claimant was injured in City 2 while carrying a motor. Mr. M stated that the claimant complained about having injured his back in that incident. In addition, Mr. M testified that the claimant contacted him before he gave a recorded statement to the carrier and asked him to forget about the injury in City 2 and instead to say that he saw the claimant sustain an injury in City 1. On cross-examination, Mr. M stated that he recalled the incident in City 1 when the frame fell, but, that he did not recall the claimant's having cried out in pain after that incident.

Mr. R testified that in November 1998 when the claimant left City 1 to return to (City 3), Mr. R understood that he was alleging that he had injured his back several months earlier while they had been working in City 2. Mr. R stated that he also recalled the incident in City 1 where the frame the crew was lifting fell to the ground. He testified that neither the claimant, nor any other employee, told him that the claimant had injured his back in that incident. He maintained that he did not realize that the claimant was alleging that he had been injured in City 1 until he received a telephone call from the carrier stating that it had received an Employer's First Report of Injury or Illness (TWCC-1), which had apparently been completed by the claimant and forwarded to the carrier.

The hearing officer determined that the claimant did not meet his burden of proving that he sustained a compensable injury, that he timely reported his injury to his employer, or that he had disability within the meaning of the 1989 Act. Each of those issues presented questions of fact for the hearing officer, as the sole judge of the weight and credibility of the evidence under Section 410.165, to resolve. The hearing officer could have found for the claimant on each of those issues based on the claimant's testimony alone, if she had found it credible. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, she was not required to accept the claimant's testimony; rather, it created a factual question for her to resolve. The hearing officer was charged with the responsibility for resolving the considerable conflicts and inconsistencies between the testimony of the claimant and the other witnesses and for determining what facts had been established. She was acting within her province as the fact finder in rejecting the claimant's testimony that he was injured on _____, in City 1, that he reported that injury to Mr. R on the day it occurred, and that he has not been able to work as a result of that injury since November 6, 1998. Our review of the record does not reveal that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse them on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge