

APPEAL NO. 991311

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 June 3, 1999. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability as a result of his compensable injury from February 12, 1999, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, he was an employee of a temporary service assigned to a client company where he operated a forklift. He stated that on November 18th, he was using a forklift to move some stock. He testified that as he was about to turn right, the forklift sped up on its own and it spun in the aisle, causing his right hip and back to be caught between the forklift and a rail. The claimant testified that a secretary on her break saw that he was caught between the forklift and a rail and she went to get the claimant's supervisor, Mr. W, to help the claimant. The claimant stated that he injured his low back, right hip, and "other things" in this incident. The claimant stated that Mr. W called Ms. E, a senior staff coordinator with the employer, and reported the injury to her. The claimant testified that he also called Ms. E after he left work that day to make sure that Mr. W had reported the injury to her. The claimant maintained that Ms. E told both him and Mr. W that the employer would "take care of things" and would send him to the doctor. The claimant testified that the employer never sent him to the doctor, so in February 1999, he sought medical treatment on his own at a clinic. The claimant stated that once he sought medical treatment, he was terminated by the employer. He also testified that by that time, he was no longer able to do his job because of his injury.

The claimant introduced a supervisor's investigation report completed by Mr. W and dated \_\_\_\_\_. That report states that the forklift the claimant was driving "jetted into high speed and [claimant's] body was pinched between racking post and frame of forklift." That report also contains a notation that Mr. W called the employer and was advised that if the claimant's hip is still bothering him on the following day, the employer will send him to the clinic.

The claimant first sought medical treatment at a clinic on February 12, 1999. The claimant was diagnosed with cervical, thoracic and lumbar strains, and a "large resolving hematoma about 10 cm in greatest dimension, overlying the right buttock." The claimant was taken off work on February 12, 1999. His cervical, thoracic and lumbar x-rays were interpreted as normal.

Ms. E testified that Mr. W was her contact at the client company where the claimant was working. She stated that the claimant worked at the client company from October 27, 1998, to January 26, 1999, and that he stopped working on January 26th because the assignment at that company had ended, denying that he was fired. Ms. E testified that she made approximately eight telephone calls to Mr. W to check on the claimant's status and that Mr. W never mentioned to her that the claimant had been injured at work. Ms. E testified that neither Mr. W nor the claimant told her about the alleged injury on \_\_\_\_\_, insisting that the claimant did not report a work-related injury to her until February 1999.

Ms. K, employer's district manager, testified that she did not learn that the claimant was alleging an on-the-job injury until February 1999, when she was so advised by Ms. E. Ms. K denied that she had a conversation with Mr. W on \_\_\_\_\_, about the claimant's alleged injury. In addition, Ms. K stated that the claimant continued to work after his injury until the assignment was completed and that she was not aware of his having missed any time from work as a result of a work-related injury.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury and disability may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's injury and disability determinations are against the great weight of the evidence. In so arguing, the carrier maintains that the claimant's testimony was not credible. Specifically, it emphasizes that the claimant "proffered no testimonial evidence to corroborate his story," that his "abnormal delay in seeking medical treatment is not consistent with Claimant's alleged injuries," and that his x-rays were normal. The carrier also emphasized those factors to the hearing officer at the hearing. As the fact finder, it was solely his responsibility to determine the significance, if any, of the inconsistencies between the claimant's testimony and that of Ms. E and Ms. K, the delay of the claimant in seeking medical treatment, and the normal x-ray studies, in determining whether the claimant had satisfied his burden of proving injury and disability. The hearing officer was acting within his province as the fact finder in deciding to credit the evidence tending to demonstrate that the claimant sustained a compensable injury and had disability and to reject the contrary evidence. The hearing officer's injury and disability

determinations are sufficiently supported by the claimant's testimony, the accident investigation report, and the records from the clinic, including the February 12, 1999, slip taking the claimant off work. Our review of the record does not demonstrate that the injury and disability determinations are so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the hearing officer's decision on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Susan M. Kelley  
Appeals Judge