APPEAL NO. 991324

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 26, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a maintenance engineer. He testified that on _____, he was on a ladder working on an overhead air-conditioning unit. As he was reaching up, he said, he felt pain in his lower back. He said he told a co-worker, Mr. P, at the time of the claimed injury, what he had experienced, and then told Mr. K, his supervisor. According to the claimant, Mr. K told him to go to a doctor and did not fill out an accident report. Included in the evidence was a written statement of Mr. P, completed on November 18, 1998, in which he wrote that the claimant told him he was having back problems "and that he thought he had done something to it earlier that day while on a call." Mr. K completed an "absence approval form" on June 15, 1998, in which he wrote that the claimant was sent home after two hours on June 11, 1998, "due to poor health."

The claimant went to Dr. T because, he said, the employer told him he needed to see a doctor to determine what he could do. He took with him a copy of his job description and asked Dr. T to determine which of the essential elements of the job the claimant could perform. Dr. T wrote "no" by eight of the 15 physical requirements. Dr. T also wrote on the form that the claimant has insulin dependent diabetes. The claimant gave this report to the employer on June 16, 1998, and was told to obtain "specific documentation" from Dr. T about his physical abilities. On June 22, 1998, Dr. T completed a handwritten statement in which he wrote that the claimant had "chronic low back pain and some peripheral neuropathy." No mention is made in either of these reports of an on-the-job injury on _____. The claimant worked off and on until June 29, 1998. On July 2, 1998, he came to the employer to pick up the forms to apply for short-term disability. He testified that because of his back concerns, he began seeing Dr. B, D.C. On August 4, 1998, Dr. B wrote that the claimant "was injured on the job . . . on the date of _____." Dr. B entered a diagnostic code of 724.8 on his various reports, but did not otherwise provide a verbal description of the diagnosis. He referred the claimant to Dr. N. Dr. N examined the claimant on July 27, 1998, and recorded the history of the claimed injury as provided by the claimant. His diagnoses were lumbar discogenic pain, cervical sprain/strain, and probable peripheral diabetic neuropathy.

Ms. L, the facility manager at the time relevant to this claim, testified that she prepared a written chronology of incidents involving the claimant, which was introduced into evidence. It reflected that since May 6, 1998, the claimant received a series of warnings about his substandard job performance, which she attributed to his diabetes. She said she gave the job description to the claimant to take to Dr. T and then asked for the later clarification. The first indication she had of a problem with the claimant's back, she said, was when he reported back from his second visit with Dr. T and said he could not do some things required in his job. Ms. L testified that the claimant never said these restrictions were due to a work-related injury at various meetings with her and when he picked up his short-term disability forms on July 2, 1998. She said she was first made aware of this claim when she received a call from the office of the claimant's attorney on July 7, 1998.

The claimant had the burden of proving that he sustained a compensable back injury as claimed. 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 and could be proved in this case by his testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer commented in his decision and order that the claimant "had been having problems performing his job duties because of uncontrolled diabetes" and that Dr. T did not mention "an acute back injury, but rather a chronic back condition" from prior surgery. He concluded from this evidence and evidence of the lack of a mention of the work-related injury to the employer prior to July 1998 that the claimant did not meet his burden of proof with credible evidence. The claimant, in his appeal of this determination, correctly notes that corroborating witness evidence of the injury is not necessary and that, even if Dr. T does not mention an injury, the reports of various other doctors support the claimant's theory of causation. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). The recording of a history of an injury in a medical report as related to the doctor by the claimant is not proof in itself of the truth of that history. Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. As the carrier pointed out, these histories depend for their correctness on the credibility of the claimant who provided that information. The hearing officer clearly did not find the claimant credible in his assertion of a work-related injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable back injury as claimed on _____, and affirm that determination.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge