

APPEAL NO. 991344

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 27, 1999. With regard to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1998 unless otherwise noted); that, because claimant did not have a compensable injury, the alleged injury did not extend to the cervical and thoracic spine (and other body parts); and that claimant did not have disability.

Claimant appeals, contending that he was injured as he had testified and that the employer had falsely and improperly terminated him. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as the mail and supply requisition supervisor for the employer tax consultant firm. Claimant testified that his hours of work were from 8:00 a.m. to 5:00 p.m., Mondays through Fridays, but that sometimes he left work early to mail parcels at the post office. This case begins on Thursday, October 22nd, when claimant's supervisor, Ms. P, told claimant that a sexual harassment complaint had been filed against him. It is undisputed that claimant was upset, and asked, and was given, permission to leave early that day and to have the next day, October 23rd, off. What took place next is in dispute. Ms. P testified that, while she gave claimant permission to leave early, she asked him to mail some parcels at the Federal Express station and that claimant ignored her. Claimant generally denies that. It is also undisputed that claimant came to the employer's place of business briefly on Monday, _____. Who claimant spoke with and what was said is disputed. Ms. P testified that claimant came in, "laid a piece of paper on my desk and turned around and walked out," and said "I'm sick and I've got to go to the doctor." Claimant said he came in, brought a letter from his attorney (about the sexual harassment charge) and "told them that I had to take that day off to go see a doctor." Claimant came to work on Tuesday, _____, and around noon (estimates were anywhere from 11:00 a.m. to 1:00 p.m.), as he was loading cases of copier paper on a dolly, he "felt a real sharp pain in [his] back" just above the belt line. Claimant testified that he reported the injury "almost immediately" to Ms. P but claimant said that Mr. P said "she was going to a meeting and that she would speak to me later." Ms. P denies that encounter or conversation. Claimant testified that he continued working until 3:30 or 4:00 p.m. when he was terminated by Ms. P in the presence of Ms. M. Ms. P and Ms. M testified that claimant was terminated because of his failure to take the parcels to be mailed on October 22nd, insubordination to Ms. P that day, and to settle the sexual harassment claim. It is undisputed that claimant did not mention his injury at the time he was terminated.

Claimant testified that he went to see a doctor the next day, October 28th, at the (clinic); however, the clinic records show that claimant's initial visit was on October 30th. (Claimant's representative said "that it's not uncommon for the [clinic] to give courtesy visits while waiting on authorization.") Ms. P testified that the first knowledge she had that claimant was claiming an injury was on November 3rd when the clinic called another of employer's managers who told Ms. P that claimant was at the clinic with an injury. A clinic Initial Medical Report (TWCC-61) dated November 3rd showing an initial visit on October 30th, had a history of "lifting several boxes of copier paper" and had a tentative diagnosis of lumbosacral, thoracic, cervical, bilateral shoulder and bilateral rib cage strains. The mechanics of how these multiple injuries occurred is not explained other than the quoted history. X-rays and testing were essentially normal. Claimant testified that he applied for unemployment benefits on either _____ or 28th. Claimant also testified that he was released to work on December 2nd and found employment with another employer on December 15th. A clinic TWCC-69 dated March 25, 1999, certified claimant at maximum medical improvement on March 24, 1999, with a 12% impairment rating.

A good deal of the CCH dealt with the events on October 22nd and claimant's subsequent termination on _____. Claimant's position was that "he was terminated due to the fact that he is a black male accused by a non-black woman of sexual harassment and for no other reason." We would note that the dispute before us is a workers' compensation claim rather than an employment discrimination case. Carrier contends that the claim is a retaliation claim for claimant's termination. Clearly, the evidence is in conflict, particularly in regard to whether claimant reported his injury to Ms. P prior to his termination. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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 trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Claimant, in his appeal, reiterates some of his testimony including why he was terminated and asserts that Ms. P "failed to testified [sic] that she had given [claimant] permission to leave early on [October 22nd]." Our review of the record is that Ms. P did testify that claimant could leave early but that he was to mail some parcels on the way and that claimant had refused to answer or acknowledge her. ("Every time I asked him something, he literally would not answer me. It was like I was not even there.") Claimant further asserts that the hearing officer erred by relying "solely on the employer's testimony and not on the facts and medical evidence." As noted above, it is the hearing officer's responsibility to resolve inconsistencies and conflicts in the evidence. Because the hearing officer chose to believe one witness rather than another does not constitute error. 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.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge