APPEAL NO. 991439

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 June 17, 1999. She (hearing officer) determined that the respondent/cross-appellant (claimant) sustained a compensable repetitive trauma injury to his left upper extremity on _____, and that he had resulting disability from January 15, 1999, through February 22, 1999. The appellant/cross-respondent (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response to the carrier's appeal, but the claimant appeals that part of the decision which ended disability on February 22, 1999, contending that this determination is contrary to the great weight and preponderance of the evidence. The carrier responds to the claimant's cross-appeal, contending that the evidence supports not only a finding of no disability, but also no disability after February 22, 1999.

DECISION

Affirmed.

The claimant was a machine operator for a boot manufacturer. His job involved loading rolls of plastic wrap in a dispenser and pulling pieces off the roll and wrapping boots. He estimated that in a normal shift, he wrapped 500 to 600 pairs of boots. He said that he pulled the plastic with his left arm and that around noon on _____, while pulling, he felt pain in his left arm. He said he reported this to his supervisor and continued working until March 15, 1999, when the pain greatly increased.

The claimant apparently had a compensable right hand/arm injury on (prior date of injury), for which he was treated by Dr. J, D.C. He visited Dr. J on January 13, 1999, a week after the current claimed injury. The report of this visit addresses a right upper extremity condition and notes that deep tendon reflex testing of the left biceps and triceps was normal. The claimant said in his testimony that he told Dr. J he had severe right-sided pain, even though the pain was on the left.

The claimant was referred to Dr. R on January 15, 1999, who recorded complaints of left anterior chest pain with left arm numbness and pain to the fingers. Dr. R urged the claimant to see a cardiologist to determine if there was an underlying heart condition. The claimant declined this advice and returned to Dr. J the same day. The report for the visit with Dr. J refers to the new date of injury of _____, and gave a history of the claimant lifting an object from ground level. In his testimony, the claimant said that he told Dr. J that he hurt himself lifting an object, but that was not what hurt him, rather it was the constant pulling on the plastic. The diagnoses included cervical/brachial/cranial and carpal tunnel syndromes and a wrist/hand/fingers sprain/strain. On February 22, 1999, Dr. J again examined the claimant and changed the diagnoses to rotator cuff syndrome and shoulder tendonitis. He placed the claimant in an off-work status until February 16, 1999. There was no evidence that this was ever renewed.

The claimant had the burden of proving he sustained a compensable 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, in this case, could be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. In her discussion of the evidence, the hearing officer noted the problems raised by the medical evidence, that is, the lack of any mention to Dr. J on the January 13, 1999, visit of a left arm injury and his later description of a lifting (not a pulling) incident, and nonetheless concluded that the claimant "appeared credible in his account of how the injury occurred." She also found some support for the claimant's account in the medical records, which at least reflect a left upper extremity injury. In its appeal, the carrier again points to these perceived problems with the evidence and argues that the claimant was really asserting an accidental injury, not a repetitive trauma injury. The issue of a compensable injury was described in the benefit review conference report and at the start of the CCH as a repetitive trauma injury. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In her role as fact finder, she was required to resolve inconsistencies in the evidence and determine what facts have been established. She found the claimant credible, despite the problems raised in the medical evidence. 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 find the testimony of the claimant, believed by the hearing officer, sufficient to support her finding of a compensable injury.

The carrier appeals the finding of disability largely on the basis that there was no compensable injury. The claimant appeals the ending of disability on February 22, 1999, on the grounds that the claimant testified disability continued beyond that date and that this was supported by the medical records in which Dr. J suggested further testing and did not clearly return the claimant to work. Disability was also a question of fact for the hearing officer to decide and could be proved by the claimant's testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer acknowledged this principle in her decision and order, but, unlike her decision on compensability, found the medical records more persuasive than the claimant's testimony. She was not compelled, as asserted by the claimant, to find that those records supported disability beyond February 22, 1999. Clearly, another hearing officer may have found otherwise, but under our standard of appellate review we find the evidence sufficient to support the disability determination in this case.

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

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Judy L. Stephens
Appeals Judge