

APPEAL NO. 991601

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 July 7, 1999. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that she timely reported her injury to her employer; and that she had disability as a result of her compensable injury from January 9, 1999, through June 14, 1999. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. It does not appeal the determination that the claimant timely reported her alleged injury to her employer. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, she was a production employee working on the plastics line. She stated that as she was lifting 12 empty plastic buckets from the line to a box, she felt immediate pain in her neck, left shoulder and left arm; that she reported her injury to her supervisor, Mr. R, a few minutes after it happened; that Mr. R asked her if she wanted to go to the doctor; and that she decided not to go to the doctor because she needed to keep working to continue making money for the upcoming holidays. The claimant stated that she continued to work, with pain, until January 8, 1999, when she resigned because she could no longer stand the pain. On cross-examination, the claimant acknowledged that she did not seek medical treatment until January 20th, after she resigned on January 8th; that when she resigned, she told the employer that she had found another job closer to her home and did not mention her injury; and that she had left work on the day before the injury to go to the doctor because she had a ride, explaining that she had not gone to the doctor after the _____ injury, because she did not have transportation.

On January 20, 1999, the claimant sought treatment with Dr. A, a chiropractor. In his initial report, Dr. A reported a history of the claimant's having injured her back, left arm and left shoulder "lifting cans that weighted [sic] about 60 pounds." In his report of February 23, 1999, Dr. A reported that the claimant also advised him that she was "doing the job of two or three people because [the employer] was short handed." In April 1999, the claimant began treating with Dr. T, a chiropractor. In his Initial Medical Report (TWCC-61), Dr. T also records a history of the claimant's having injured her neck, upper back, left arm, and left shoulder "lifting cans over and over." In a "To Whom it May Concern" letter of May 24, 1999, Dr. T opined that the claimant's "injury of _____, is directly related to her work and her job duties on the day of her injury." In that letter, Dr. T states that the claimant was "required to repeatedly lift cans of food weighing up to 50 Lbs." Dr. T also notes that he had not ordered diagnostic testing because of the carrier's denial of the claim and the claimant's pregnancy.

Mr. R testified that the claimant told him in November 1998 that she injured her back pushing some boxes and that she did not mention that she was injured lifting buckets. In addition, Mr. R noted that the claimant only mentioned injury to her back and did not state that she had injured her neck, left shoulder, or left arm. Mr. R stated that when the claimant told him of her injury, he offered to send her to the doctor and she declined. He testified that he would have provided transportation, if the claimant had asked to go to the doctor. In addition, Mr. R denied that the employer had been shorthanded over the holidays and that the claimant was required to do the work of two to three people. Finally, Mr. R stated that when the claimant resigned her position with the employer, she told him she had gotten another job closer to her home and did not mention her 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 argues that the "record is replete with examples of inexplicable inconsistencies and actions completely illogical for a truthful person to take." The carrier also emphasizes the fact that diagnostic testing did not support the claimant's claimed injury. However, as Dr. T noted, diagnostic testing was not done because the carrier denied the claim. The carrier emphasized the same factors it emphasizes on appeal to the hearing officer at the hearing. As the fact finder, it was solely his responsibility to determine the significance, if any, of those factors in determining whether the claimant had satisfied her 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. Our review of the record does not demonstrate that those 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 fact that another fact finder could have drawn different inferences from the evidence in the record,

which would have supported a different result, does not provide a basis for us to disturb the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge