APPEAL NO. 991645

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 8, 1999. He determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these determinations, expressing his disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked for a uniform supply company. In early November 1998, he was diagnosed with Bell's Palsy, a nonwork-related condition involving a paralysis or numbness of the right side of the face, tearing of the right eye, and pain around the ear. On December 8, 1998, he returned to work after treatment for this condition. His job involved putting laundry in large laundry bags, which could weigh up to 300 pounds, and using a metal bar to move the bags along a conveyor belt. He said that on _____, his work became heavier and he experienced pain in his neck and shoulders. His work shift was from 6:00 a.m. to 2:30 p.m. He said he complained about his neck and shoulder pain to his supervisor, Ms. R, but to no avail. On January 25, 1999, he was supposed to change to a later shift from 8:00 a.m. to 4:30 p.m. for one week to accommodate an employee who would be on vacation. He did not report to work that day, but saw Dr. J, who was treating his Bell's Palsy. Dr. J's report of this visit reflects numbness on the right side of the face, inability to move the right eyelid, marked drooping of the muscles, and drooling. Dr. J specifically wrote that the neck was "supple" with normal range of motion (ROM). No mention is made of complaints of shoulder or neck pain even though, according to the claimant, he mentioned to Dr. J his neck and shoulder pain. Dr. J issued a return-to-work slip with "no head tilt vision" and a requirement to keep the right eye patched. Not until a visit on February 3, 1999, does Dr. J record a complaint of pain in both shoulders. He assessed shoulder impingement syndrome. On February 12, 1999, Dr. J wrote that the claimant's shoulder pain "is not due to his Bell's Palsy. The pain in his shoulders is due to an injury at work." Dr. F, in a letter of February 17, 1999, stated that the Bell's Palsy was not related to the claimant's neck, mid-back, or shoulder pain. The claimant then began treating with Dr. B, D.C., on April 12, 1999. His diagnoses included cervical syndromes and bursitis of the shoulder, which he attributed to repetitive trauma at work on or about _____. The claimant has not worked since January 25, 1999.

Mr. T, the production manager, testified that the employer needed the claimant to change his shift effective January 25, 1999, but still do the same job. Mr. T said he was told by Ms. R that the claimant said he could not work the new hours, but never mentioned a physical problem with working. According to Mr. T, he also spoke with the claimant on January 21 and 22, 1999, when the claimant agreed to the new hours and never mentioned an injury. When the claimant came to work on January 26, 1999, with Dr. J's work

restrictions, Mr. T said, the claimant never attributed them to an injury on the job. Because work was not available within these restrictions, the claimant was placed on a leave of absence. Mr. T said he first found out about the claimed injury on February 2 or 3, 1999, when the claimant's son came in to discuss the necessary paperwork for the leave of absence.

The claimant had the burden of proving that 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. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer found that the claimant did not meet his burden of proof. This case is complicated by the existence of Bell's Palsy, which is not a work-related condition. According to his discussion of the evidence and findings of fact, the hearing officer found particularly compelling Dr. J's January 25, 1999, report that the neck was supple with normal ROM. From this he concluded that there was "no reasonable explanation for the absence of a correct history concerning the shoulder and neck injury." Finding of Fact No. 6. In doing so he rejected the claimant's explanation that he complained of neck and shoulder pain to Dr. J at this visit. He also concluded that Dr. J's February 3, 1999, diagnosis of shoulder impingement did not establish a shoulder injury prior to this date, thereby rejecting Dr. J's, Dr. F's, and Dr. B's opinions relating the shoulder and neck conditions to work activities on _____. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In the role of fact finder, the hearing officer can accept or reject in whole or in part any of the evidence, including the medical evidence. Texas Workers' Compensation Commission Appeal No. 93810, decided October 26, 1993; Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 and persuasiveness of the evidence for that of the hearing officer. Rather, we find the decision of the hearing officer that the claimant did not sustain a compensable injury on _____, sufficiently supported by the evidence.

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:

_____
Gary L. Kilgore
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge