

APPEAL NO. 991684

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 July 13, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on Injury 5, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and thus did not have disability. The claimant appeals, urging that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and arguing the evidence and positions advanced at the CCH. Respondent (self-insured) urges that credibility played a focal part in the decision of the hearing officer and that there is sufficient evidence to support the determinations made.

DECISION

Affirmed.

Claimant, a probationary employee hired on February 25, 1999, testified that he felt a pop and burning sensation in his back when he lifted a box between 4:00 and 6:00 p.m. on Injury 5. He stated that he told another employee about the incident; that his back did not bother him that much; that he continued to work until 11:00 p.m.; and that he did not tell his supervisor because he was on vacation. He stated he did not remember the name of his supervisor or who his supervisor was even though the immediate supervisor was at the hearing. According to the claimant he felt worse the next day and before going to work at 3:00 p.m. he went to the doctor's office where he had been treated for a prior back injury. He was not able to see the doctor but believes the doctor's office contacted the employer, a person he thought was JJ, but that the employer did not call back.

Claimant stated that when he went to work at 3:00 p.m. on March 9th he was terminated because he was not pulling his "quota." He did not mention anything about a work-related injury at that time. He testified that he contacted the doctor's office again about the 14th or 15th of March and was told that he needed to fill out an injury report at the employer. He did so and was sent to a company doctor who diagnosed a back sprain/strain. On March 25th, he decided to go to another doctor, Dr. M, who took claimant off work, treated him with a TENS unit, heating pad, and medication and recommended an MRI which was never done because the claim was disputed. Dr. M's Initial Medical Report (TWCC-61) of that date indicates that the claimant "did not report any prior injuries, serious illnesses, or any surgeries . . . he denied any chronic problems or recent injuries in the areas of current involvement." Claimant acknowledged that in an interview with an adjuster (in evidence) he responded "I had one back in 1995 I believe" to a question as to whether he had ever had any other job-related injuries in the past.

Mr. M testified that he is claimant's supervisor and observed him at work daily although there were other supervisors, depending on shifts. He testified that the claimant was terminated on March 9th because of instances of leaving work early. He states that the claimant did not mention any injury to him on the 8th or 9th of March and that the

claimant did not act as if he were hurt when he left on March 8th. Mr. T, a second level supervisor above Mr. M, testified he made the decision to terminate the claimant, that the decision was made prior to any report or knowledge of an asserted work injury, and that the decision was made because of instances of leaving early. He stated he checked with other supervisors and that no report of an injury has been made by the claimant and that a supervisor had several earlier discussions with the claimant about his leaving his shift early.

A report from the Texas Workers' Compensation Commission in evidence indicates that records show that the claimant had four prior injuries recorded, three being related to the back: Injury 4; Injury 3; Injury 2; and Injury 1.

We agree that this case hinged largely on credibility. In this regard, the hearing officer states he did not find claimant's testimony persuasive. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). While a claimant's testimony may establish a compensable injury, a claimant's testimony does not have to be accepted at face value and may be believed in whole, in part, or not at all. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Although, as claimant urges, there is evidence that could support a compensable injury having been sustained, we cannot conclude that the findings, conclusions, and decision of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). That different inferences could be made from the evidence is not a sound or sufficient basis to overturn a hearing officer's factual findings or to substitute a different fact finding judgment at the reviewing level. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Not finding legal error or that the decision does not find support in the evidence, we affirm the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge