APPEAL NO. 991773

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 16, 1999, a hearing was held. He (hearing officer) determined that appellant (claimant) did not sustain a compensable injury at work on _____, and therefore had no disability. Claimant asserts that the medical evidence shows that he sustained an injury, that the hearing officer had no basis for questioning the mechanism of injury, and that he was not serious when he commented that he did not want to work anymore and thought about being on workers' compensation until he retired in two years. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. He testified that he had worked for this employer since 1968. He said that he is a die master; the dies are made for painting symbols on boxes. On the day in question, he was taking a die down from an overhead rack (he said it weighed 25 pounds), when it slipped and he bent forward to catch it. He then felt pain in his low back. He completed the day and went for medical care the next day.

Claimant said he saw Dr. A, who said he could do light work. Claimant then saw Dr. F on February 18, 1999, who said he could not work; provided him with physical therapy; and allowed him to return to work on May 17, 1999. Claimant described his pain from the _____, injury as including radiating pain, which he contrasted to prior back pain he had in 1978. Claimant also stated that since 1978, he has not missed work because of back pain until the _____, injury. He also said that he did not tell anyone he was planning to "go out on workers' compensation."

Dr. F testified for claimant that claimant's MRI of February 26, 1999, shows a disc protrusion of four millimeters that is "minimally flattening the anterior dural sac." He said this report is consistent with claimant's history of having bent forward and catching a die that caused a strain/sprain. He said that although there were no prior records for comparison, he did not believe that the bulge/herniation was preexisting since claimant had been able to work during the past years. Dr. F agreed that claimant had "degenerative problems" shown on the MRI in question. In conclusion, Dr. F testified that he thought claimant sustained a sprain/strain and radiculitis on _____.

Mr. P testified that he also works for employer. He said that claimant said that he had two years left until retirement and thought about being on workers' compensation until that time. Mr. P said that claimant said this before the _____, injury, but added that he thought it was "just talk." Mr. P provided two statements; one was dated April 8, 1999, in which he said basically what he testified to concerning what claimant had said about workers' compensation. He wrote the other one on June 10, 1999, that said claimant's

reference to workers' compensation was “only talk,” adding, “I felt as if I was pressured into giving a statement to them against [claimant] in fear of losing my job.”

Dr. F referred claimant to an orthopedic surgeon, Dr. M, who assessed low back pain with radiculopathy. Dr. P performed an examination of claimant on behalf of carrier in May 1999 and gave his impression as a lumbar strain.

While claimant testified the weight of the die was 25 pounds, an investigative report by employer said that die plates weighed “10-20 pounds.”

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He stated in his Statement of Evidence and Discussion that the evidence was insufficient to show that a compensable injury occurred. He added that it was based on the fact that claimant “may” have been planning an injury (emphasis as written) but also, and “more importantly,” that he did not believe claimant was injured by reaching for a die that weighed “10 to 20 pounds.” The hearing officer may consider all the evidence in reaching his decision.

While another fact finder may have made different inferences from the evidence presented, that is not a basis for overturning the hearing officer's factual determinations. The hearing officer did not state that he disagreed with the medical evidence indicating that claimant has a back condition, but merely that he did not believe the evidence showed that an injury happened at work on _____.

Given the evidence presented, the determination that claimant did not sustain a compensable low back injury is not against the great weight and preponderance of the evidence. We affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge