

APPEAL NO. 992008

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 August 13, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____; whether he timely reported the injury, and if not, was there good cause; and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____; did not timely report an injury, without good cause; and that he has not had disability. The claimant appeals, pointing to evidence that he urges is the great weight and preponderance of the evidence proving that he sustained a back injury in the course and scope of his employment on _____; that he reported the injury and the employer had actual knowledge of the injury; and that he had disability from the injury. The respondent (self-insured) argues that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The claimant testified that he injured his back when he slipped and fell walking down a ramp on _____. He denied any prior back injuries or problems. He states that he told R, his supervisor at the time, and that a coworker heard him do so. A statement from the coworker in evidence supports this assertion. He stated that R told him not to report it since he was a new employee and that she gave him some pain medication. Claimant stated he went to an emergency room several days after telling R; however, no records of this visit were offered in evidence. The claimant continued to work. He eventually saw a Dr. G in March 1998, and underwent an MRI which showed a herniated disc at L4-5, bulging at L3-4, L1-2 and L2-3, and mild kyphotic curvature in the upper lumbar spine likely related to the degenerative disc disease in the lumbar spine. Dr. G subsequently performed a discectomy at L4-5 on April 23, 1998. A medical report from Dr. G dated March 27, 1998, diagnosed a herniation at L4-5, states that the claimant has had symptoms on and off for years, had had an original workers' compensation claim in 1981, and notes that he was hospitalized and told he had a degenerative back condition.

The self-insured's evidence included a medical report dated December 17, 1997, which shows the claimant was examined at a health center with complaints of low back pain and was treated. Self-insured also introduced a statement from the employer's superintendent which set out the reasons for the claimant's termination on March 17, 1998, for not following company procedures. One of the entries indicates that the claimant called in on March 11, 1998, and stated that his leg hurt from an old injury and that he might need surgery. A brief statement from RB (claimant referred to RW, whom he stated he could not locate since she retired, but the employer representative indicated that there was only one

R who had been an employee) stated that the claimant at no time told her that he had a job-related accident and that if he had she would have reported it. Two other statements, one from MH and another from the assistant director, indicated that the claimant had called on March 11 and March 16, 1998, to state his knee was hurting from an old injury and that he would not be in. Employer's records show that the asserted back injury was reported on April 27, 1998.

BB testified that she was the claimant's supervisor on _____, and had been for about two weeks. She stated that the claimant never reported a work-related injury to her. She stated that about a week after she started supervising the claimant, he mentioned to her that he had been in a car wreck and injured his knee.

The hearing officer indicated in his discussion that he did not find claimant's testimony credible. From all the evidence before him he was not persuaded that the claimant had sustained his burden of proof that he sustained a compensable back injury on _____, and that he reported it at that time. The burden to prove a compensable injury was sustained and that timely notice was given, or good cause shown, was on the claimant. Texas Workers' Compensation Commission Appeal No. 950150, decided March 10, 1995 (Unpublished); Texas Workers' Compensation Commission Appeal No. 91016, decided September 6, 1991. Clearly, there was conflicting evidence regarding both whether the claimant sustained a back injury on _____, and whether he gave notice to anyone in authority within 30 days. While there is medical evidence showing a disc herniation that led to surgery after _____, there is other medical evidence which indicates that the claimant's back condition and injury were related to prior conditions and injury. Although the claimant denied a prior back problem, the medical record from December 1997 and the entries by Dr. G discount this testimony. It was for the hearing officer to resolve these conflicts and unless his determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound legal or factual basis to disturb his decision. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We do not find that to be the situation here. In assessing the credibility and weight to be given testimony, a hearing officer may believe all, part, or none of the testimony of any given witness and he is not required to accept a claimant's testimony at face value. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Since the hearing officer found as fact, and is

supported by evidence before him, that the claimant did not sustain a back injury on _____, and did not report an asserted injury within 30 days (good cause not being shown by any evidence), there can be no disability under the 1989 Act, by definition. Section 401.011(16). For the reasons stated, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge