APPEAL NO. 992022

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 24, 1999. The issues at the CCH were whether the appellant (claimant) sustained an injury in the course and scope of employment on (current date of injury), and whether he had disability. The hearing officer determined that the claimant did not sustain an injury in the course and scope of employment on (current date of injury), and did not have disability. The claimant appeals, urging that the findings and conclusions of the hearing officer leading to his decision are not supported by sufficient evidence and asks that the decision be reversed. The claimant also asks for an extension of time to amend his September 13, 1999, request for review after reviewing tape recordings of the proceeding. Although an extension of time is not provided for in the 1989 Act, and none has been approved (Texas Workers' Compensation Commission Appeal No. 94285, decided April 20, 1994), as of this date, no amendment has been received by the Texas Workers' Compensation Commission. The respondent (carrier) urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and asks for affirmance.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the pertinent evidence in the case and it will only be outlined here. Succinctly, the claimant testified that he sustained an injury to his back at work on (current date of injury), while he and others were preparing to assemble an antenna. He states that he indicated to others at the time that he injured his back, and that he reported the matter. He went to a doctor the same day. The claimant acknowledged that he had a back injury in (1st date of injury). According to a report of December 12, 1998, outlining medical history, the (1st date of injury) injury was diagnosed as a herniated nucleus pulposus (HNP) at L5-S1, bulge at L4-5, and some canal stenosis. In any event, he returned to work in May 1998 with physical restrictions that were virtually the same both before and after the claimed (current date of injury), incident. The diagnosis in the December 12, 1998, medical report was lumbar strain with preexisting HNP in the lumbar area. An MRI taken in December 1998, which was reported as showing only four vertebrae present, "apparently related to sacralization of L5" and that it was otherwise a normal lumbar spine. He apparently was not accepted back at work until the disputed injury was resolved. In this regard, sometime during the time frame of August 10, 1998, and (current date of injury), the claimant was made aware that a court had reversed the award of benefits for the (1st date of injury) injury, apparently on a default summary judgment.

The carrier called a coworker, Mr. F, as a witness and he testified that prior to (current date of injury), the claimant told him that he "was going to have a second accident

so he would have a new case." Although the claimant stated Mr. F was a liar and that he had been convicted of crimes, Mr. F denied ever being convicted of a crime and presented a Texas concealed gun permit issued to him which, he asserted, could not be issued if he had ever been convicted of a crime. Also offered in evidence and acknowledged by the claimant was his prior conviction of the felony of aggravated robbery. Statements, which the claimant testified were not true, from other employees indicating they were not aware of the claimant injuring his back in an incident on (current date of injury), were admitted in evidence.

Although the claimant was not allowed to return to work for the employer, he subsequently found other employment. One position that he states he was not able to perform was because of physical restriction that began from the (1st date of injury) injury.

Clearly, credibility played a significant role in the outcome of this case and it is apparent that the hearing officer was not persuaded by the claimant's testimony, or the medical evidence offered, that he sustained a new injury on (current date of injury). The hearing officer was not bound to accept the claimant's testimony at face value (Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ), and he could accord whatever weight he deemed appropriate to the testimony and statements of other witnesses. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Section 410.165(a). While there are certainly conflicts and some inconsistency in the testimony and other evidence, this is a matter for the hearing officer to resolve in arriving at the facts of the case. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We have reviewed the evidence of record and cannot conclude that the findings and conclusions of the hearing officer are not supported by sufficient evidence or that they are so against the great weight and preponderance of the evidence as to be

clearly wrong or 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). Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Gary L. Kilgore
Appeals Judge