

APPEAL NO. 992503

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 19, 1999, a hearing was held. He determined that appellant (claimant) did not sustain a compensable injury on _____, or any other relevant date, and had no disability. Claimant asserts that he did injure his back at work on _____, adding that he was nervous at the hearing; he adds that Dr. M indicated that he had disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He testified that on _____, when he lifted two boxes of food (each weighing 30 pounds) he hurt his back. He said he was working with JN at the time. He stated that he told his supervisor, Mr. S, on _____, that he injured his back lifting. Mr. S said in an undated statement that he was not told of an injury on _____. He added that claimant reported an accident on the date terminated, but said he did not know the exact date of injury; he also said that claimant replied "no" when asked if there were any witnesses.

Claimant kept working until he was terminated on May 12, 1999. He first sought medical care on May 18, 1999. He said that the employer sent him to (company doctor). The report dated May 18, 1999, does not provide a history or assessment other than a diagnosis of lumbar and sacrum strain; it does provide a "case date" of _____, which is the date, claimant testified, that he was injured. The records show that claimant received physical therapy on May 19 and May 20, 1999, and then began seeing Dr. M on May 20, 1999. Dr. M refers to an injury to claimant at work on April 26, 1999, in two places in his initial report. He said claimant was unable to work.

A later report dated August 3, 1999; from a company doctor said that claimant was only seen once and did not return for physical therapy. As stated, the medical records showed that he did receive physical therapy on May 19 and May 20, 1999, and then began seeing Dr. M on May 20, 1999.

Claimant provided statements from LVN, JN, and JLN. JN, who claimant said was present when he hurt his back, said on _____, that he was working with claimant on a shipment to ES when claimant said "he thought he hurt his back." JN then added, "our last shipment to ES was on _____. " LVN said on July 27, 1999, that he did not see the accident, but was present and asked claimant what was the matter; claimant said he hurt his back lifting boxes. (LVN did not provide a date of the accident.) JLN on July 24, 1999, said that he witnessed claimant's injury, adding that they were lifting at a steady pace. He said claimant "all of a sudden grabbed his back and told me that his back was in pain." (He did not provide a date either.)

Studies showed that claimant had mild degenerative disc disease and also that he had a mild disc protrusion at L3-4.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He made a finding of fact that claimant's testimony was not persuasive. While the hearing officer may believe a claimant and generally may base a determination favorable to a claimant on his testimony alone, the hearing officer does not have to believe that claimant was injured in the way he testifies. The hearing officer could believe that claimant's back condition resulted from something other than an injury at work.

See Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). With some medical records showing a time of injury in April, with one of the statements of a coworker indicating that claimant complained of back pain prior to _____ (during a shipment to ES which ended on _____), and other statements not providing any date in which claimant had pain, the hearing officer could conclude that the time in which claimant felt pain was uncertain. As such, he did not have to conclude that an injury occurred at work. The evidence is sufficient to support the determination that claimant did not sustain a compensable injury.

With an affirmed determination of no compensable injury, there can be no disability. See Section 401.011(16).

The decision and order are sufficiently supported by the evidence and are affirmed. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge