APPEAL NO. 000012

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On October 1 and 29, 1999, a contested case hearing (CCH) was held. With regard to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable low back injury on _____ (all dates are 1999 unless otherwise stated) and that claimant has not had disability.

Claimant appealed, contending there were communication problems with his supervisor, asserting that he had sustained the alleged back injury, disputing the hearing officer's authority to give less weight to a chiropractor's report and questioning how the hearing officer can "override a medical opinion." Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds to the points raised and urges affirmance.

DECISION

Affirmed.

At the outset, we will note the translation problems. The CCH was initially convened on October 1st but was continued because the hearing officer was concerned that claimant could not "follow what's going on." At the second session of the CCH, an "interpreter" translator was present but apparently claimant answered some questions in English with the interpreter then giving an explanation. On most longer answers, the translator would begin the translation with "He said . . . ." Consequently, when claimant was testifying what he told his supervisor or doctor, it is frequently unclear whether the "he said" refers to claimant, supervisor, or doctor. We will further note that much of the testimony was in conflict and who said what is contradictory.

Claimant was employed by a trucking company putting brake groups on semi tractor axles. Claimant speaks Arabic and some English. It is relatively undisputed that the brake groups weighed about 80 pounds, were taken off a wooden skid, placed on the axle which is about waist level and then bolted down. Claimant testified that on the morning of _____, he "felt some kind of shock," and that he had back pain going down into his left leg. Claimant said that he immediately reported the injury in English to his supervisor. Exactly what was said is in dispute. Mr. N, the supervisor, agrees that claimant came to him on _____ and said that he was in pain and that he, Mr. N, asked claimant if he had hurt himself at work which claimant denied. Claimant, at the CCH, testified that he thought Mr. N was asking "if something had fell on me." (The same sort of conversation occurred a few days later between claimant and Ms. S, the employer's benefits administrator, who also believed claimant was denying a work-related injury.) In any event, claimant was released to go see a doctor and went to a nearby hospital emergency room (ER) where again claimant alleges a communication problem occured.

The ER record of _____ states claimant was "seen for medical reason." The ER notes are handwritten and very difficult to decipher. Claimant was diagnosed as having a pilonidal abscess on his buttock. It appears undisputed that a pilonidal abscess is an ingrown hair or cyst. A nurse's note has a complaint of "knot on [left] Buttock" and a typed admissions symptom was "knot on left buttock x's 1 day." Claimant was given medication for an infection and released. Claimant later told Ms. S he had an infection on his back because that is what the ER doctor told him. Claimant is somewhat vague as to whether he did or did not have an abscess; however, he contends the work-related back pain was in another area than the ingrown hair. Claimant testified the medication he was given did not help him and that he eventually sought treatment from Dr. E, a chiropractor, who spoke Arabic.

Dr. E, in a report dated May 26th of a May 14th visit, diagnosed an unspecified lumbar disc disorder, radicular syndrome of the lower limbs and muscle spasms. Dr. E prescribed chiropractic manipulation, muscle stimulation, etc., five times a week initially, then three times and finally two times a week. Claimant was taken off work. In a report dated July 14th, Dr. E notes a history of lifting 75-pound brake shoes, and comments that claimant "suffered a traumatic injury" and continued claimant off work.

The hearing officer, in his Statement of the Evidence, comments:

> [Mr. N] testified about his communication with Claimant, and more weight is given to [Mr. N's] testimony. Little weight is given to medical evidence supporting Claimant's assertions. Claimant asserts disability to the present which is not supported by adequate objective testing. Claimant is not persuasive as to the issues.

Claimant, in his appeal, states that he speaks Arabic and had communication problems with Mr. N (and apparently also with the ER personnel and Ms. S) and that he is frustrated because his communication/speech problem caused the hearing officer to find his testimony unpersuasive. That may be so; however, Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Section 410.165(a) gives the hearing officer authority to believe or disbelieve the opinion of a doctor. Further, to the extent that Dr. E's reports are based on the subjective history provided by claimant, the hearing officer was free to conclude that the reports were

not credible and to determine the weight to give those reports. It is fairly clear that claimant's testimony conflicted with that of Mr. N and Ms. S, and for that matter the ER records. The hearing officer chose to believe Mr. N rather than claimant. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge