APPEAL NO. 000110

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 6, 1999, a hearing was held. The hearing officer determined that appellant (claimant) did not sustain a compensable neck and left shoulder injury on _____; that he did not timely report such an injury and showed no good cause for late reporting; and that he did not have disability. Claimant asserts that he did hurt his neck and shoulder while working and cites the statement of Dr. R; he says that he did provide notice the day of injury; and he states that he has not been released to work. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He testified that on _____, he hurt his neck and left shoulder while lifting materials used in his work as a fabricator/operator. He said that he reported the injury that day to Mr. M, a supervisor; claimant went home early that day. However, claimant continued to work at his regular job until May 21, 1999, although he said he asked for, and received, help in lifting some material during that period of time.

Claimant first sought medical care from his family physician on October 27, 1998; apparently he complained of sore or painful muscles in his neck and shoulder; Dr. R diagnosed a strain, but his record of October 27, 1998, says nothing about claimant's work. Claimant returned to Dr. R on May 11, 1999, concerning his neck pain. Dr. R provided a statement dated July 24, 1999, which said that claimant's visit in October 1998 was "for a job related injury." The Texas Workers' Compensation Commission (Commission) sent claimant to Dr. B for a "Commission selected required medical examination" on October 7, 1999. Dr. B was of the opinion that claimant was truthful and that the mechanism of injury as described (moving sheets of iron) is consistent with a strain.

Two coworkers provided statements indicating that claimant was hurt at work; one added that Mr. M knew of this injury. Mr. M testified that he was not told of an injury and did not learn of an injury until May 1999; he said if he had received such a report he would have made an injury report. There was also testimony from Mr. R, a safety director, that he only learned of an allegation of a work-related injury in May 1999. Mr. B said he was a lead man in October 1998, and he did hear from claimant that his "neck hurt" but did not recall when he heard this; he did not know that claimant was stating it resulted from work until May 1999. (While Mr. M had said that no report of an injury was made to him, he did indicate some recollection of claimant having crushed his thumb at another time which was not made the subject of any injury report.)

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The evidence was conflicting, requiring the hearing officer, as fact finder, to resolve those inconsistencies. In so doing, he could consider that claimant continued to work for several months after _____; that very little medical care was provided; and that the initial medical care does not reflect a history of a work injury. While Mr. M's testimony that an injury report would have been made if notice were provided to him could be considered to have been impeached somewhat by the history of the crushed thumb, that incident was a matter for the hearing officer to consider.

Claimant calls attention to a passage in the very detailed Statement of Evidence in which the hearing officer equates a reference to six or seven months prior to May 19, 1999, as occurring on either December 19 or November 19, 1998, when in fact the dates should have been November 19 or October 19, 1998; this was in relation to a passage in the Employer's First Report of Injury or Illness (TWCC-1), which referred to employer first receiving notice in May 1999 of an injury "6-7 months ago." This one miscalculation in seven pages of summarized evidence did not control the hearing officer's decision. Although the hearing officer did not state directly that he considered Mr. M to be more credible than claimant, the hearing officer's decision that claimant did not report an injury until May 1999 shows that the hearing officer gave more credibility to the testimony of Mr. M than he did to that of claimant. The testimony of claimant and Mr. M about notice was far more direct than the reference to "6-7 months ago" concerning whether notice was given or not; the medical record of Dr. R shows that there was a strain in late October 1998, not November or December 1998, as one could infer from the reference made by the hearing officer in his Statement of Evidence concerning when "6-7 months ago" would have been. In addition, the hearing officer did not incorporate any reference to a possible injury in November or December 1998 into any finding of fact which may indicate that he did not consider that portion of his Statement of Evidence as significant. We do not therefore believe that the miscalculation requires remanding this case for further clarification by the hearing officer.

When a decision is based on factual determinations, it will only be overturned on review when those factual determinations are against the great weight and preponderance of the evidence. In this case, as stated, the evidence was conflicting, but the evidence for claimant did not amount to the great weight of the evidence presented. Therefore, the determinations that claimant did not sustain a compensable injury, that notice was not timely given with no good cause for late notice, and that there is no disability will not be reversed.

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

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge