APPEAL NO. 000130

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 20, 1999, a hearing was held. The hearing officer determined that respondent (claimant) compensably injured his back on _____, and had disability from September 27, 1999, to the date of the hearing. Appellant (carrier) asserts that there was no compensable injury, adding that claimant's own testimony indicates he merely bent over when he felt pain, that he did not report an injury for 12 days and that claimant was not credible; carrier added that there should be no disability because claimant was returned to work on September 19, 1999. The appeals file contains no reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____. He testified that his work entailed picking up trash in roadways. He described his injury as a "snap" in his back, which he heard, when he "bent over." He did not in any testimony describe lifting anything, but said the snap and resultant pain occurred as he bent over. Claimant also said that he did not work for the remaining hour left in the day and told the supervisor of his injury when picked up at the end of the shift. He also said that he telephoned and told Ms. J, the personnel director for employer, on the following day, (day after the date of injury), of the injury. He also said he made added telephone calls to employer between (day after the date of injury) and September 22, 1999, when a report of injury was made.

Claimant testified that he went to an emergency room (ER) for treatment on (day after the date of injury), and several times in the next days; he then began treatment with Dr. VB. Dr. VB took claimant off work on September 27, 1999, and kept him off work through the date of the hearing.

The first medical document in the record from the ER is dated September 11, 1999, not (day after the date of injury); in addition, Dr. VB, who began treating claimant on September 27, 1999, describes claimant's injury as consistent with "lifting"; Dr. VB said:

> The "snap" that he herd [sic] was most likely cavitation of the facet joints in his lower back, caused by the weight of the trash bags exceeding the ligamentous integrity of the affected facet joints.

As stated, claimant consistently testified that the snap occurred when he merely bent over; no lifting was involved. Obviously, there are inconsistencies between the dates claimant said he sought medical treatment and the documents provided and also between claimant's testimony and Dr. VB's recitation of the manner of injury. Carrier likens claimant's description of his injury to that of a walking or sitting injury and says it is not compensable. The "bending over" may also be compared to injury from a turning or twisting movement or

to a specific injury, as opposed to a repetitious physical trauma injury, occurring when a worker is in the act of sitting down at his desk and strains his low back. *See* Texas Workers' Compensation Commission Appeal No. 950102, decided March 3, 1995. There was no evidence indicating that this claimant's pain was merely coincidental to his presence at work that day.

In addition, Ms. J testified that she first spoke to claimant about an injury on September 22, 1999; she said that, when she then queried claimant's supervisor, he too had not heard of an injury. While there was no issue as to timely notice, this conflicting testimony also presented an issue of credibility for the hearing officer to resolve.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She did not comment as to the credibility of either Ms. J or the claimant in her Statement of Evidence or findings of fact. She did state that she concluded that claimant satisfied his burden of proof, so weight must have been accorded his testimony. The weight to give evidence is a matter for the hearing officer to decide. Unless the factual determination resulting therefrom is against the great weight and preponderance of the evidence, the Appeals Panel will not overturn a decision based on factual findings. In this case, while there are discrepancies and inconsistencies, we cannot say that the finding of fact that claimant sustained an injury to his back is against the great weight and preponderance of the evidence.

It is true, as carrier states, that claimant was released by ER personnel on September 19, 1999, to restricted work, and it may be true that claimant could have continued to work under the restrictions imposed. However, there was no issue of bona fide offer of work. In addition, the hearing officer did not begin the period of disability until claimant began treatment with Dr. VB, who took him off work on September 27, 1999. There is nothing in the 1989 Act that prohibits a hearing officer from giving weight to the opinion of a chiropractor as to disability even when a medical doctor has not indicated the claimant should not work at all.

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:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge