

APPEAL NO. 000246

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 7, 2000, a hearing was held. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on _____, and has not had disability. Claimant asserts that he was injured and has had disability, pointing out that he was medicated on July 19, 1999, when he gave a statement, and questioning weight given to Dr. S opinion. Claimant also states that there was a gap in his chiropractic treatment for his back problem from November 19, 1997, to July 10, 1998, and says that he did not have right calf numbness prior to _____. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He was born in 1934 and had worked as a truck driver for many years. His chiropractic records showed that he received treatment on (date), four days before the alleged date of injury; four lines of descriptive words were written in regard to July 2nd, whereas only two lines were written on (date), the day after the alleged injury, and while Dr. E writing is largely illegible, none of the writing on July 7, 1999, refers to an injury, a slip at work, or any incident. On (date), claimant was described as having lower back pain for three to six weeks which goes from "better--worse--better--worse." The area of L5-S1 is mentioned as tender. About two weeks prior, on (date), Dr. E had noted that not only was the low back sore but so was claimant's right leg. It is true that on July 9, 1999, Dr. E does write, "calf [illegible] numbness."

In addition to Dr. E's absence of any reference to an injury in his note of (date), claimant's own report of injury dated July 13, 1999, said that his back and right leg pain "started after leaving cust. dock." In his statement of July 19, 1999, he described that there were no steps so he "stepped up on the back of my trailer, pulled myself up on the dock from the ground." (He went on to say that since the shipment had not been paid for and that customer would not pay for it, his truck was not unloaded and he left.) The questioner then asked, a question which claimant answered as follows:

17. So there is not a specific incident that you're aware of that would have caused it.
1. No, I'm just saying this is the customer I was at last before I started having problems.

Claimant testified at the hearing that he "slipped and did something to my back" when climbing up on a customer's dock on _____, but he then said that he did not know he had done anything to his back at the time it happened. When claimant first saw

Dr. P on September 24, 1999, two and one-half months after _____, Dr. P wrote that claimant on _____, "stepped up onto a trailer tire. He was hanging onto the trailer with one of his hands, his right foot slipped, and he hit his right knee on the trailer . . . [h]e felt something in his back, but he said it really wasn't a lot of pain . . . but within fifteen minutes he started to get pain." Dr. P also said that "patient did deny any previous problems with his low back. . . ." Dr. P, later in his report, said that claimant's condition "is a direct result of his on-the-job-injury of (date). The patient did not have any previous problems with his back. . . ."

Claimant was examined by Dr. S on behalf of the carrier on October 21, 1999. Dr. S stated in his report that claimant has "longstanding" degenerative changes in his low back. Dr. S referred to both x-rays and an MRI. Dr. S also testified that objective findings "actually ruled out an injury or an acute change. . . ." He also said that the conditions shown on the MRI were "long-term changes that occur over a period of years" and "preexisted" _____.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The hearing officer commented in his Statement of Evidence that claimant was receiving chiropractic treatment for his low back just a few days before the alleged injury but did not tell Dr. P of his prior back trouble. In summarizing Dr. S's testimony, the hearing officer was not merely citing medical opinion out of a vacuum, but Dr. S's opinion could be considered in the context of claimant's prior "better--worse--better--worse" back condition as shown by Dr. E's records. While the medical/chiropractic records could be considered together, and that evidence alone would be sufficient to support the determination that claimant did not show that he sustained a compensable injury on _____, the hearing officer also considered that claimant for an extended period of time did not relate the particular slipping incident that he provided to Dr. P. That sequence of events could reasonably lead a fact finder to question the credibility of the claimant. Claimant's failure to relate a specific incident was not confined solely to his statement of July 19, 1999, when he asserts that he was on medication. An absence of chiropractic treatment from November 1997 to July 1998 does not negate the sufficiency of the support for the hearing officer's belief that claimant had a prior back condition for which he received treatment just before the alleged injury. Similarly, what appears to be an absence of a reference to calf numbness in Dr. E's difficult handwriting prior to July 9, 1999, does not mean that the hearing officer, in the totality of all the other evidence, was compelled to find that claimant was compensably injured on _____.

Without a compensable injury, there can be no disability. See Section 401.011(16).

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:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge