

APPEAL NO. 000271

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 18, 2000, a hearing was held. The hearing officer determined that respondent (claimant) sustained a compensable lumbar sprain/strain on _____, and had disability from September 4, 1999, through the date of hearing. Appellant (carrier) asserts that credibility of the witnesses is significant to the determination of this decision, referring to one witness' memory failure as insignificant; it also said that medical evidence as to injury was questionable. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer), as a laborer. He testified that on _____, while lifting some sandbags he believed he hurt his back. He said that he reported this injury that day and indicated that he was going to get medical care. He said the accident happened in mid morning and he left at noon to get help; he did not work the next day and returned on (date), to get a check for past work.

Records from (ER) show that claimant was treated on (date); the records are preprinted, generic type but say, "your back pain is most likely caused by a strain of the muscles or ligaments" As pointed out by claimant, the ER records do show that claimant was released from the ER at 3:48 p.m. on (date). A note signed by a doctor at the ER says claimant was seen on (date), and should not work until (date), and should do no lifting until seen by an orthopedic specialist. Claimant then on (date), saw Dr. L, who took him off work, noting decreased range of motion (ROM).

Mr. R testified that he is the foreman above claimant. He said that claimant did not report an injury to him on _____; he also said that claimant worked all day on _____, and that his hours are from 7:00 a.m. to 4:00 p.m. Mr. R said that he did give claimant some time off the next day because he had "business to take care of." Mr. R then learned of a claimed injury on Friday, (date). In addition to Mr. R's testimony, Mr. J provided a statement in which he said he worked with claimant and claimant did not say he had hurt himself and did not appear to have hurt himself.

The testimony at this hearing contained references by claimant to name calling by Mr. R and references by Mr. R to inadequate work by claimant.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He commented that the medical records showed that claimant was seen on (date), and said that such records were more credible than the testimony of Mr. R. He took into account the employer's records which showed that claimant was paid for

(dates) in ruling that disability began on (date). Credibility is the responsibility of the hearing officer to weigh, not the Appeals Panel. The hearing officer's opinion shows that he performed that task and resolved the matter based on the medical records. While there was little objective evidence, objective evidence is not essential to a determination that an injury has occurred. The evidence was sufficient to support the determination of a compensable injury and disability.

There was also an issue of carrier's failure to sufficiently dispute the compensability of the injury, which the hearing officer decided in carrier's favor. There was no appeal as to that determination.

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

Elaine M. Chaney
Appeals Judge