APPEAL NO. 000331

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 27, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable low back injury on _____; and whether the claimant had disability from that injury and, if so, for what periods. The hearing officer determined that the claimant did not sustain a compensable low back injury and, therefore, did not have disability. The claimant appeals, urging error in the hearing officer's findings of no compensable injury and no disability and asserting, essentially, that the hearing officer should have given greater weight to his testimony; that medical evidence shows a work-related injury; and that the overwhelming evidence proved the injury and disability. The respondent (carrier) responds, citing sufficient evidence to support the determinations of the hearing officer and asking that the decision be affirmed.

DECISION

Affirmed.

The claimant, who had been employed for approximately one month as a carpenter, claims that he sustained a back injury on _____, when he heard a "pop" in his back as he was working with concrete forms. He indicated that his back had been "tight" earlier in the day and he would rest. He did not report any injury at the time and continued working until he was terminated about one and one-half hours later stating he did not think it was significant. The testimony of the claimant and a statement from his supervisor clearly showed that there were personality disputes between them and that the claimant was terminated on the day of the claimed injury for "unsatisfactory performance" or "insubordination." In any event, at the time he was terminated he filled out his exit interview form and indicated "no" to the questions on the form that asked "[d]id you incur an occupational injury while working on this project" and "[h]ave you incurred an injury or illness at this project that you wish to report for the first time now." Apparently, the claimant inquired about other job possibilities that same day. The claimant stated that later that night and the next morning he was stiff and he took some over-the-counter medication. The following day, he states, he went to the employer for the purpose of reporting an injury and to get his check. When he mentioned his injury, the safety man asked if he wanted to see a doctor and indicated he would make an appointment right then. The claimant said he was out of gas and could not go at that time and it was arranged that an appointment would be made; the claimant left two phone numbers (it was not clear how frequently he was at either number as the claimant did not have a phone) where he could be reached and he was given a referral form. According to the claimant, he did not get a call and when he called the employer sometime on June 11th or 12th, the line was busy. He states he called the doctor's office that day, and again a week later, but the employer had not made an appointment. He also indicated that he went to the doctor's office but did not have the

referral paper with him at the time and he was told that he needed to make an appointment. He did not go and get his referral form and did not make an appointment. He later talked to an attorney and was referred to a chiropractor, Dr. N, who diagnosed lumbar strain and myofascial pain syndrome and took the claimant off work on June 23, 1999. A subsequent MRI run on July 6, 1999, indicated generalized posterior disc bulges at L4-5 and L5-S1 with "no evidence of intervertebral disc extrusion" being identified at any level and "the remainder of the examination is unremarkable."

The hearing officer determined that the claimant did not sustain a compensable injury and, thus, did not have disability. It is apparent that she did not give preponderant weight to the claimant's testimony asserting an injury to his back during the afternoon of _____. As the sole judge of the weight and credibility of the evidence (Section 410.165(a)), she was not obligated to take the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The hearing officer could consider the other evidence and circumstances surrounding the claimed injury in reaching her determinations. In this regard, it was clear that there was difficulty between the claimant and his supervisor and he was terminated for reasons of performance or insubordination (suggesting the possibility of a spite claim); there was no report or other indication of an injury at the time of the claimed injury; the claimant had inquired about other work after being terminated; the claimant specifically stated no injuries on the exit questionnaire after being terminated; the claimant's somewhat limited follow-up in going to the employer's doctor; the delay in obtaining medical treatment; and the findings of the MRI report. The hearing officer was faced with resolving the various conflicts and inconsistencies in the evidence and arriving at factual findings. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In applying our standard of review, only were we to conclude from our review of the evidence, which we do
not here, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a reason to disturb her decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge