APPEAL NO. 000338

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 12, 2000. The hearing officer determined that on _____, the appellant (claimant) did not sustain a compensable injury and that the claimant has not had disability. The claimant appeals, stating that the hearing officer's decision is so against the great weight and preponderance of the evidence so as to be clearly wrong and unjust and requesting that the decision be reversed. The claimant argues that the hearing officer overlooked certain pertinent evidence. The respondent (carrier) responds that the claimant failed to establish a compensable injury and, thus, failed to establish that he sustained disability and requests the Appeals Panel to affirm the decision. The carrier also questions the timeliness of the claimant's appeal because the claimant had not properly served a copy of the appeal on the carrier.

DECISION

We affirm.

We have ascertained that the appeal was timely filed (on February 9, 2000). The claimant said he was employed by (employer) for four and one-half years on the date of his injury, _____. This was shown to be a Saturday and the claimant said that he was probably working overtime. He was assistant operator of a printing press.

One of the claimant's tasks was to get the ink to put into the press. He said that he lifted the ink bucket, like every day, then felt some pain in his back and a little pop. He said he told his supervisor, Mr. G, about the incident and went home. There were no witnesses.

The claimant said his shift was from 2:00 p.m. to 10:00 p.m. The accident happened between 6:00 p.m. and 7:00 p.m. He said that he filled out a report and left it on Mr. G's desk before he went home. He denied that Mr. G offered to take him to the doctor. The claimant went to see Dr. C, either on _____ or _____ (Monday or Wednesday); he could not recall which day. The claimant was also unable to recall the date when he returned to work after Dr. C took him off work, but agreed that July 1, 1999, was "about right." The claimant said that he treated with Dr. C for a duration of what he guessed, but could not recall, was a few months, until the carrier denied his claim.

Asked what Dr. C had told him was wrong with his back, the claimant responded that he was told "a lot of things" and that he did not really remember everything the doctor said. The claimant did say that he had previous treatment by Dr. S for his low back in 1997. He said his injury then was a back strain that was not serious. Before that, he was in an automobile accident in 1996 and had back surgery in 1991.

The claimant thought that the bucket of ink he lifted weighed 15 to 20 pounds, but was not sure. He said he would have lifted such a bucket at work all the time. He also said that he lifted 40-pound dyes frequently. He denied he was having problems at work prior to his injury. It was noted by the hearing officer that one of the claimant's medical records said he experienced pain while "doing sports," but claimant denied that he played sports and said he did not know why the doctor wrote that.

On cross-examination, it was brought out that the claimant had previous claims for back injuries on _____ (while employed by another company), and on _____. He also admitted that he had been reprimanded for absenteeism prior to his current injury.

The claimant was shown as absent from February 18th to 22nd and he was demoted on the 22nd. He agreed he was officially reprimanded on February 25th.

The claimant was seeking a period of disability from February 28 to June 30, 1999. Over his objection to relevance, the carrier asked if the claimant also had a part-time job in September 1999 (when back working full time for the employer) and he said he probably did. The claimant said he was laid off on October 10, 1999, and the company had shut down. He was unemployed at the time of the CCH but looking for work.

The claimant specifically complains on appeal that the hearing officer overlooked a statement from Mr. G. The entire statement is as follows:

> When [claimant] was completing injured employee's statement on _____, I offered to take him to the doctor and [claimant] said:"no want to go home, I see you Monday." I replied okay and [claimant] said, "I hope."

An unsigned report from Dr. C about a March 1, 1999, examination stated that the claimant's symptoms were consistent with and related to his report of injury. This report contains the reference to complaints of pain while doing sports. The doctor diagnosed thoracic and lumbar sprain, post-traumatic headaches, and radiculitis. Dr. C issued an off-work statement for the period from February 27th through April 27th. An unsigned MRI report dated May 24, 1999, reported three-level herniations. This report indicates a worsening from a 1997 MRI, which showed bulging and dessication but no herniations. The claimant received a six percent impairment rating from his 1996 injury.

Dr. W reviewed the claimant's medical records for the carrier on October 7, 1999. Dr. W appears to have reviewed the May 1999 MRI itself rather than the report only. Dr. W stated that there was a loss of disc space at two levels with chronic degenerative changes and spurring. He said there was no evidence whatsoever of acute or subacute changes and that the MRI he saw had exactly the same changes present in 1997. Dr. W does not use the word “herniation” to describe what he saw on the 1999 MRI. Dr. W concluded that any recurrent symptoms would be related to his previous injuries.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

We are neither convinced that the hearing officer ignored Mr. G's statement, or that it would have changed the outcome even if fully credited by the hearing officer. At best, it indicates that Mr. G has knowledge that the claimant has alleged an injury. The statement does not say, as the claimant argues, that Mr. G had personal knowledge of any facts underlying the claimant's contention of injury. The hearing officer still had to believe that the facts alleged by the claimant were true. The claimant was evidently not believed by the hearing officer and we must point out that a claimant's credibility is not enhanced when he comes to a CCH with lack of knowledge about relevant dates and courses of action that were taken during the course of the claimed injury.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here and affirm the hearing officer’s decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge