

APPEAL NO. 000342

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 10, 2000, a hearing was held. He (the hearing officer) determined that appellant (claimant) did not sustain an injury or a compensable injury on either _____ or _____, and had no disability. Claimant asserts that medical evidence shows that he sustained an injury to his low back, that there is "no evidence in the record controverting claimant's claim of injury" and there is "no evidence in the record controverting claimant's claim of compensable injury," and that two supervisors verify that claimant was injured in the course and scope of employment. Finally, claimant points out that the parties agreed that disability existed for a particular period of time if a compensable injury was found. Respondent (carrier) replied that the decision should be affirmed, but pointed out that one stipulation, as written, omitted the word "if," which should be inserted at the beginning of the stipulation.

DECISION

We affirm.

Claimant worked at (employer) in December 1998. He testified that he, his father (who was his supervisor) and another employee were lifting the bed of a pick-up off the frame of the truck; as he set it down, he felt pain in his leg. While the evidence varied as to the date in December when this event occurred, the testimony at the hearing indicated that it happened on _____. The evidence did not vary in showing that the next day claimant and his girlfriend drove to (city 1), Texas, where they boarded an airplane destined for (state). Approximately two weeks were spent in (state) with a friend. Claimant stated that he and his friends went sightseeing but that the amount of sightseeing was restricted because of the pain he had in his leg. He saw no doctor in (state). When he returned from (state), he returned to work, but said that he could not perform the work after January 19, 1999.

Claimant saw Dr. H on January 19, 1999. Dr. H noted claimant's complaint of pain in his left leg from his buttocks down for one month and that claimant had taken a vacation, "but leg is no better, denies injury." Dr. H then had an MRI made, and on March 2, 1999, referred claimant to Dr. Ha. Claimant saw Dr. Ha on March 9, 1999. Dr. Ha noted a large herniated disc at L5-S1 and said claimant was a surgical candidate. Dr. Ha also said that claimant "note[s] approximately one month ago without any clear particular event, began to experience severe left-sided low back pain . . . [h]e does note he was involved in excessive lifting as a car mechanic and frequently does do heavy lifting."

Claimant testified that his father did not want him to file a workers' compensation claim and both he and his father hoped that the injury was minor and would resolve. Claimant's father testified that he told claimant not to file a claim and later, when it appeared to possibly be serious, encouraged claimant to use the family health insurance.

Then when surgery was necessary, he agreed that workers' compensation should be used. Claimant's father also testified that he was present when claimant, he, and one other employee lifted the pick-up truck bed and claimant's father did say claimant complained of pain after they lifted the bed. Mr. R provided a statement in which he said that he was present and helped lift the truck bed; he said that claimant "complained after we got through there . . . about hurting his back." Mr. R said he was not sure when this occurred when asked if it occurred on _____.

Claimant's father had stated earlier in the process that the incident in question arose on _____, and that is the date on the Employer's First Report of Injury or Illness (TWCC-1), introduced by carrier. Both claimant and claimant's father testified that after looking at various paperwork, they believe that the incident occurred on _____. Claimant did have spinal surgery and is back at work now.

The testimony, including that of claimant and his father, is that a lifting incident occurred on _____, and afterwards claimant remarked about back pain. Mr. R basically says the same thing. There is no evidence of some other event having caused claimant's herniated disc, such as some physical activity in (state) in January 1999, or some other activity in December 1998 in Texas. (Mr. F testified that he is the friend claimant visited in (state) and said that no strenuous activity took place and that sightseeing was reduced based on claimant's condition.) However, claimant did not promptly seek medical care. An extended period of time did elapse after _____ (or _____) before medical care was sought. The sequence of events does not show an accident promptly followed by medical care.

On the contrary, and contrary to claimant's appeal, there is evidence that no particular incident caused injury, the herniated disc—claimant's histories of injury as reported to two doctors, which extended into March 1999. The history provided to Dr. Ha not only states "no particular event" but indicates a more recent onset of significant pain. While the hearing officer could certainly have believed claimant's testimony and that of his father, the hearing officer was not obligated to believe such testimony, and other evidence, as opposed to the history provided by Dr. H and Dr. Ha; claimant did not testify that he reported a work injury at a particular time to medical personnel but that both (or either) Dr. H and Dr. Ha misconstrued his words and recorded his history in error.

The hearing officer stated in his Statement of Evidence that claimant was "neither credible nor truthful." Credibility is a matter for the hearing officer to consider. Claimant stated in his testimony that he lied in providing his medical history. The hearing officer may believe part, all, or none of a claimant's testimony. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The hearing officer did not find that claimant did not have a herniated disc, but that he sustained no injury on _____ or _____, and sustained no compensable injury on either of those dates. As fact finder he may believe that a claimant has not shown that an injury occurred in the way claimant testified. See Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge

of the weight and credibility of the evidence. See Section 410.165. The Appeals Panel will only reverse a factual determination when it is against the great weight and preponderance of the evidence, which we do not find present in this case.

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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge