

APPEAL NO. 000352

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 20, 2000, a hearing was held. The hearing officer determined that respondent (claimant) sustained a compensable low back injury on _____; timely notified his employer; and had disability from March 23, 1999, to October 6, 1999, and again from November 8, 1999, through the date of hearing. Appellant (carrier) asserts that there is insufficient evidence to support the hearing officer's determinations, citing a delay in seeking medical care and inconsistent statements plus absence of notice of an injury. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____, as a service technician. He was installing cable at the time he fell from a ladder. There is no dispute that a fall from a ladder occurred. Claimant's testimony at the hearing could be interpreted to reflect some reticency. He did not say that when he fell he landed across the ladder that had fallen on his "back sideways," or that the surface upon which he fell was concrete. Both these points are contained in a statement he gave in May 1999. In addition, at the hearing he testified that he may have fallen "about 10 feet," whereas Mr. N statement of June 1, 1999, said that claimant fell "about 15 feet."

Mr. N's statement indicated that he was an employee working nearby stringing cable and heard claimant fall. He said, "I look down and he already on the floor." He also said that claimant fell across the ladder which preceded him down. Mr. N said claimant told him, "I'm hurt but I think I'm okay." Mr. N said that in 15 to 20 minutes a manager, MC, came by and claimant "just repeat what happened"; Mr. N also said that claimant "tell him the story." (Mr. N had said that claimant's statement, "I'm hurt, but I think I'm okay" was "all he reply" and "that's all he said.") Mr. N said that claimant kept working.

Claimant testified that he told MC on _____, that he was sore. MC testified that claimant told him of no symptoms and did not say he was injured. The ombudsman called MC's attention to his statement of May 26, 1999, in which he said that claimant had apparently landed on his buttocks. In that statement, MC said claimant's "description to me was, uh, the injury was to his pride more than anything else." MC added, "I did, uh, of course make sure that he was feeling okay, that his back was okay" and that claimant said he "was perfectly fine."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could give significant weight to the statement of Mr. N as indicative that claimant did tell MC he was hurt. She could conclude that MC placed more reliance on the part of claimant's short recitation in which he said that he was "okay." This

evidence sufficiently supports the determination that claimant gave timely notice. In addition, claimant's statement also says that the next day he was "moving kind of slow" and told MC, "I must have landed on the ladder harder than I thought cause I was pretty sore." Claimant added that MC replied, "takes time for bruises and stuff to heal up." The hearing officer could also give this reference weight even though MC said that claimant never said anything more about the fall.

Claimant also said in his statement that his fall "had caused me pain, but, uh, I played football growing up and just muscle pain takes, you know, a few weeks sometimes a little bit more for it to completely go away. Instead this was increasingly getting worse."

Claimant first sought medical care on March 23, 1999. Claimant had been fired on March 2, 1999. He said he obtained another job but was able to only work about four days because of his back condition.

As pointed out by the hearing officer's Statement of Evidence, claimant repeatedly visited emergency rooms (ER) after his initial medical visit on March 23, 1999. The initial medical record shows a history of a fall "2-3 weeks" ago at work with radiating pain. The chart also noted chronic back pain but claimant testified that he had no back pain before the fall but had pain prior to March 24, 1999, from the fall of _____. Other ER records show that the herniated disc found on MRI was "acute." An entry in the ER record of May 3, 1999, says that claimant said he "slipped going down steps and made the pain worse." The hearing officer's Statement of Evidence shows that claimant had been seen nine times in ERs since the fall and before May 3, 1999. While the author judge did not see a copy of an MRI report in the record, the May 22, 1999, report of Dr. K says that the MRI was performed on April 21, 1999, and showed a herniated disc at L5-S1. With claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) showing that his pain increased in the first two weeks of March and with claimant's statement indicating that he thought it was a muscle injury that would get better, the hearing officer could conclude that claimant's first medical care on March 23, 1999, did result from the injury of _____ and not from some later event. Claimant's testimony and statement, the statement of Mr. N, and the medical records provide sufficient evidence to support the determination that claimant sustained a compensable low back injury in the fall of _____.

While carrier points to claimant's "rocky" personal life and failure to seek medical care for almost one month, claimant testified that he has not been able to work. The hearing officer can give weight to his testimony and could consider that claimant's testimony in many places appeared to understate the facts. The hearing officer correctly denied disability for a period of time in October and November when claimant was in jail. There is medical evidence in the record which indicates that claimant was unable to work. The evidence is sufficient to support the periods of disability found by the hearing officer.

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:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge