

APPEAL NO. 000375

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 6, 2000, with the record being closed on January 11, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to his left shoulder, neck, and low back on _____; whether he had disability; and what was the date of injury. The hearing officer determined that the claimant did not sustain a compensable injury to his left shoulder, neck, and low back on _____; that he did not have disability; and that the date of the alleged injury was _____. Claimant appeals, urging that the date of injury was the last day he worked on _____, and that the evidence established a compensable injury but that the hearing officer confused the date of injury and failed to address the extent of injury and disability. The respondent (carrier) urges that there is sufficient evidence to support the decision and asks that it be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth the evidence fairly and adequately and it will only be summarized here. At the hearing, claimant testified he injured his low back, left shoulder, and neck on _____, the last day he worked in (city 1), Texas, while lifting a concrete block. He stated he reported the injury to his supervisor (the supervisor denied that claimant reported a back injury on that date but that he had complained about his shoulder bothering him sometime up to two weeks before) the last day he worked. However, earlier documentation, including his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), indicated a date of injury of _____. An amended TWCC-41 dated November 17, 1999, changed the date of injury to _____. Claimant states he and other workers went to (city 2) and that his back bothered him on the way, and when he got to (city 2), Texas, he tried to call the employer but could not reach anyone. He later went to the Texas Workers' Compensation Commission office and told them that he was injured about three weeks earlier which resulted in the _____ date. He was not able to see a doctor because the carrier did not approve it and he went to a hospital on September 14, 1999. He later saw Dr. L on October 6th and was diagnosed with cervical and lumbar disc syndrome, nerve root compression, myofascitis and myalgia. An MRI indicated degenerative disc disease with disc protrusions. A carrier doctor, D. P., examined him on December 17, 1999, and diagnosed "distinctly abnormal chronic pain syndrome with functional overlay and somatoform disorder versus malingering."

The hearing officer, noting the confusing and uncertain testimony of both the claimant and the supervisor, indicated she did not find either particularly credible. Based on the evidence, and apparently giving weight to the initial notice of injury, the hearing officer found the date of the asserted injury to be _____; that on that date the claimant did not sustain a compensable injury and did not have disability. Although claimant testified that he attempted to seek medical care earlier, the first medical report is dated September 14, 1999, other medical reports indicate degenerative disc disease and protrusions, and a further medical report from Dr. P indicated that claimant "has a distinctly non-physiologic examination today which anatomically and physiologically makes no sense." His diagnosis suggests a somatoform-type disorder or even malingering. In any event, the hearing officer was not convinced from the evidence that the claimant sustained a compensable injury, and without a compensable injury did not have disability. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer had to resolve any inconsistencies and conflicts in the evidence. The hearing officer could believe all, part, or none of the testimony of the witnesses, including the claimant. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). Only were we to conclude, which we do not here from our review of the evidence, that the findings and conclusions 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 sound basis to disturb the 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:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge