

APPEAL NO. 000607

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ (all dates are 1999 unless otherwise noted) and did not have disability. The claimant appeals, emphasizing medical and other evidence that supports his contention and requested that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a "line haul" or long-haul truck driver for the employer trucking company. Claimant testified that on _____ he was riding in the sleeper portion of his tractor trailer, which was being driven by his co-driver, CT, when, in the process of rolling over, the truck hit a bump or low spot, or "rumble strip" or "another sweep place," causing claimant to "wrench" his back. Whether there was a bump, divot, etc., is in dispute. Claimant also testified that as he was turning over, he felt "a bump and then a pop in [his] back." Claimant testified that he felt immediate pain. Claimant said that after a while, he changed over and drove five hours or so in pain to the employer's terminal where he reported his injury. A few hours after claimant got back to the terminal, claimant sought medical attention from Dr. L. Claimant was off work from October 4th through November 15th.

In an Initial Medical Report (TWCC-61) dated October 7th of an October 4th visit, Dr. L recites a history of riding in the sleeper, turning over, "when the driver hit a bump & twisted [claimant's] lower back." Dr. L found "low back sprain w/severe spasms." Dr. L, in a note dated October 4th, indicated claimant had an "acute lumbar sprain/strain, lumbar muscle spasms, constant sharp pain radiating to right leg, tenderness." Dr. L ordered x-rays which were performed on October 13th and which showed mild degenerative disc narrowing at L5-S1. The "biomechanical alteration" included "abnormal straightening of the lumbar lordosis with posterior lumbar weight bearing." Claimant received a number of chiropractic adjustments. Dr. L released claimant to light duty on November 5th and regular duty on November 15th.

Carrier presented evidence that claimant had a somewhat similar no-lost-time injury to his neck (truck hit bump when claimant was going into sleeper) in _____ and an injury to his back and neck in 1997. Regarding the present injury, claimant presented the testimony of Dr. S, who testified that although she had not examined claimant, from her review of the records, it was her opinion, within reasonable probability that claimant had not suffered acute or recent trauma and that the cause of his lumbar complaints was degenerative disc disease.

The hearing officer, in his discussion, commented:

Claimant has degenerative disc problems in the lumbar spine. Claimant simply failed to meet his burden of proof that damage or harm occurred to the physical structure of his body. The evidence simply does not preponderate in Claimant's favor that the alleged jolt to his body caused any harm and particularly that the alleged jolt would have been severe enough to have possibly caused disability for the length of time, albeit short, claimed. Claimant's physical problems have no causal relationship to the alleged incident.

The hearing officer found that claimant's inability to work was due to something other than a work-related injury. Claimant, in his appeal, expresses disagreement with the hearing officer's findings, emphasizing that Dr. S never examined claimant; that the x-rays did, in fact, show objective medical evidence of a lumbar sprain/strain in the abnormal straightening of the lumbar lordosis; and that Dr. L believes that claimant's injury is work related and the diagnosis is consistent with claimant's description of his injury. Carrier's response cites some occupational disease (repetitive trauma) truck-driving cases which we do not find particularly applicable here since claimant is alleging a specific discreet injury caused by a bump or "jolt" in the road. The fact that claimant could have sustained such an injury at home while turning over in his bed does not automatically preclude it from being compensable had the hearing officer found the "jolt" had caused a neck injury.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In this case, the hearing officer found claimant had degenerative disc problems which were unaffected by any alleged jolt. In that we are affirming the hearing officer's decision that claimant had not sustained a compensable injury, claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

Dorian E. Ramirez
Appeals Judge