APPEAL NO. 000953

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 February 2, 2000, and April 14, 2000, with the record closing on April 14, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, or on any other relevant date; and that claimant did not have disability. The claimant appeals, contending that he was injured as he alleged, repeating his explanation for refusing a drug test and stating that his felony conviction should not have been considered. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Claimant was employed (apparently as a laborer) by (employer). On the morning of _____, he was being driven to work at a client company in employer's van, along with four other coworkers, when the van was struck from behind by a truck. Claimant testified that he was riding in the rear seat of the van and sustained injuries to his neck, low back, right hip and left knee. Claimant testified that he told the van driver, Ms. G, to call an ambulance because, "I'm feeling numb. I'm kind of hurting, you know." The police were called but no police report was made (according to carrier's cross-examination because there were no injuries). The only evidence on the extent of damage to the vehicles was claimant's testimony that "the car behind us lost a bumper, and it was damaged pretty bad, the truck." Ms. G apparently called in to the employer and then took the other four workers to work and then took claimant to a hospital emergency room (ER). Claimant said that he has been unable to work since that time because he is "sore."

No ER records are in evidence because claimant refused to take a drug screen test. Claimant testified that he "was offended by that" when asked to take the test and left the ER without being treated. Claimant did seek treatment with (clinic) on November 27th, where the motor vehicle accident (MVA) was noted. No diagnosis or impression was given. X-rays were interpreted as normal, and medication and a cervical collar were prescribed. Claimant, in several off-work slips, was taken off work. Claimant was seen again on February 8, 1999, with continued pain in his neck, lower back and right knee. Claimant was continued off work. Claimant was also seen at another ER on February 17, 2000, and was told he had "strained a muscle" (where is not evident) and no follow-up was scheduled.

Ms. G, in a transcribed statement, gave her version of the MVA and stated that she took claimant to the first ER where claimant refused the drug screen. Ms. G said that claimant told her "he had a joint that morning and it would show up on the, on the drug test." Much of carrier's cross-examination at the CCH dealt with a felony drug conviction,

which resulted in a six-year prison term, and several misdemeanor offenses, which resulted in six weeks or so in jail, which occurred after the _____ MVA.

The hearing officer's key finding of fact was:

FINDING OF FACT

4. Claimant did not sustain an injury on _____, as evidenced by his refusal of medical treatment when he was taken to a hospital on _____, shortly after the motor vehicle collision incident which forms the basis of Claimant's claim.

Claimant denied that he told Ms. G he had smoked a joint and that, in any event, he was a passenger in the van and had no control over the MVA. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. 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 relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We do not find that to be the case and affirm the hearing officer's decision on this issue.

Claimant, on appeal, also contends that carrier made mention of claimant's "past felony conviction, but that was an event that happened many years ago." If claimant's contention is that the conviction was improperly introduced at the CCH, we note that no objection was raised at the time and such an objection was not preserved on appeal. If it is claimant's contention that the conviction should have been "disregarded" as irrelevant, then we again point out that the hearing officer is the sole judge of the relevance and materiality of the evidence and it was up to the hearing officer to accord that evidence the weight the hearing officer believed it deserved.

In that we are affirming the hearing officer's decision that claimant did not sustain 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:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge