APPEAL NO. 001088

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 April 19, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury to his low back in addition to his left foot on _____, and that he did not have disability as a result of his compensable left foot injury for the period from December 21, 1999, through the date of the hearing, April 19, 2000. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a pipefitter. He stated that he was pushing a heavy stainless steel pipe trying to extend it to two coworkers, who were on 12-foot ladders. He testified that he went up on his toes while he was pushing the pipe and he felt pain from his left hip down to his left foot. The claimant stated that he continued to work for about a week after his injury, thinking the pain would resolve; however, he testified that he continued to have increasing pain from left hip all the way down to his left foot so he decided that he needed to seek medical treatment. The claimant spoke to the employer about needing medical care and he was sent to (clinic) by his employer.

A November 15, 1999, progress note from the clinic diagnoses a left foot sprain as does the Initial Medical Report (TWCC-61). The TWCC-61 provides a history of "felt pop to left leg." Physical therapy notes dated November 19, 1999, contain a history of the claimant's "holding pipe up overhead at one end, had to stand up on toes to hold the pipe . . . felt burning sensation in arch of foot."

Thereafter, the claimant began treating with Dr. L. In a report dated December 21, 1999, Dr. L noted a history of the claimant's having "felt electricity from the left leg down to the left foot," when he pushed up on his toes in an attempt to lift the pipe to his coworkers. In his December 21st report, Dr. L diagnosed "lumbar radiculopathy with severe nerve root compression." He referred the claimant for a lumbar MRI which revealed a "small postereocentral disc protrusion at L5-S1" and mild to minimal degenerative disc disease at T11-12, T12-L1, L3-4, L4-5, and L5-S1. In his January 4, 2000, progress report, Dr. L stated that he had reviewed the claimant's MRI, which he stated was unremarkable. Nonetheless, Dr. L stated that he felt that "the hypertrophic changes with narrowing of the intervertebral foramen and bulging disc is contributing to the [claimant's] radiculopathy." Dr. L recommended a course of epidural steroid injections.

Mr. S, an area manager with the employer, testified that he knew that the claimant was alleging a work-related foot injury; however, Mr. S insisted that until a claim was made to pursue a low back injury, he had never heard anything about claimant's having complaints of low back pain or pain from his left hip down to his left foot. Similarly, Ms. W, employer's human resources administrator, testified that the claimant only reported a left foot injury to her and that she did not learn that the claimant was alleging a low back injury until he filed his claim.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of his injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). The question of whether the claimant's compensable injury extends to his low back presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, the existence of an injury can be established by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant's compensable injury did not extend to and include a low back injury. A review of the hearing officer's decision demonstrates that she was not persuaded that the evidence presented by the claimant was sufficient to carry his burden of proving that he injured his low back in addition to his left foot in the lifting incident at work on _____. The hearing officer could properly consider the delayed manifestation of back pain, the variations in the histories given by the claimant to his health care providers, and the claimant's failure to mention a low back injury to Mr. S and Ms. W in resolving the conflicts and inconsistencies in the evidence and determining that the compensable injury does not extend to a low back injury. The hearing officer was acting within her province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The success of the claimant's argument that he had disability was dependent upon the success of his argument that the compensable injury extends to a low back injury. Given our affirmance of the hearing officer's determination that the claimant's compensable injury does not include a low back injury, we likewise affirm her determination that the claimant did not have disability for the period from December 21, 1999, through the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge