

APPEAL NO. 001173

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 27, 2000. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable (low back strain) injury on _____ (all dates are 1999 unless otherwise noted), and that the claimant had disability from May 5 through November 15.

The appellant (carrier) appealed, pointing to certain inconsistencies between the claimant's testimony, medical records, and a recorded transcribed statement. The carrier contends that the claimant's testimony "is insufficiently credible to meet her burden of proof" and that because the claimant did not have a compensable injury, she does not have disability. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed by (employer) and was assigned to work at (client company) as an "assembler." The claimant testified as to her duties and that on May 4, as she was moving a box of keyboards, she "felt a pull in [her] back." The claimant continued work that day, went home, and stated that the next day she could not get out of bed because of "excruciating" back pain. The claimant called the employer and was sent to (clinic) where she was diagnosed with a lumbar strain and released to light duty. The claimant testified that the client company had no light duty available. The claimant also saw her regular doctor, Dr. V, the same date as the clinic visit. During this time, the claimant had concurrent employment with a racetrack (racetrack) as an "admission clerk" (apparently a ticket seller/taker). The claimant also began missing work at the racetrack after her injury.

The medical evidence includes a longhand report form dated May 11 from the clinic; recites a history of pain, "boxing up keyboards" on _____; diagnoses a lumbar strain; and releases the claimant to modified duty with a 10-pound lifting restriction. In a report dated September 15, Dr. V recites that he saw the claimant on May 11 for back pain "while doing repetitive activity with frequent lifting of moderately heavy packages." Elsewhere in the medical records, Dr. V diagnosed a lumbar strain.

The claimant was involved in a severe motor vehicle accident (MVA) on May 13 where she sustained some rib fractures and an injured knee. In the September 15 report, Dr. V distinguished between the injuries sustained in the work-related injury on May 4 and the subsequent MVA. Dr. V concluded that the MVA "did not affect her original work injury

of _____, and the low back pain is separate from her rib fractures and neck pain." The claimant was also examined by Dr. P, who found "[d]egenerative disc disease about the lumbar spine, with a superimposed traumatic event as the precipitating event." Dr. P certified the claimant at maximum medical improvement (MMI) with a five percent impairment rating (IR) (MMI and IR are not at issue).

The claimant returned to work at the racetrack about a month after her work injury, apparently working modified duty. The claimant subsequently was promoted to "money room clerk," which consisted of handling money and doing data entry which was even lighter than the ticket seller/admissions clerk duties.

The carrier pointed to inconsistencies in whether the claimant said she "felt a pull," suffered a sharp pain, or just had a "normal ache." The carrier also contends that the claimant at times argues a specific injury and other times reported to the doctors a repetitive trauma injury. There is also a suggestion by the carrier that the claimant had a cold on _____, the day before the work injury, and that coughing may have caused the claimant's backache.

All of the carrier's arguments regarding the inconsistencies and contradictions were made to the hearing officer. 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). The hearing officer found that the claimant had been examined by two doctors who both diagnosed a lumbar strain and that although "there is a slight discrepancy in Claimant's version on the accident, there was support and consistency in the important aspects - i.e. that she was moving the keyboards, felt a sharp pain at 2:30, continued working and could not get out of bed the next day." The hearing officer found disability beginning on May 5 through November 15 when Dr. P said she could return to work.

We find the hearing officer's decision is supported by the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. 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

Philip F. O'Neill
Appeals Judge