

## APPEAL NO. 001352

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 May 22, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; and that he did not have disability. The claimant appealed, arguing that he has been the victim of an injustice. He asserts that a document was altered by the employer to indicate that he was not claiming a work-related injury on the date in question. The claimant also complained that his testimony was not properly translated into English. The respondent (carrier) responded that the decision is supported by the evidence and that the claimant has failed to identify where he believes the translation was inaccurate.

### DECISION

We affirm.

The claimant, who spoke only Spanish, was employed by (employer), for whom he had worked on and off for a number of years. He was beginning work on a new project when he sustained an injury on \_\_\_\_\_. The claimant said he was lifting two boards onto his shoulders when he felt "a pull" and began having pain about 30 minutes later. The boards were ten feet long, and about one and one-half inches thick. He reported his injury to Mr. M who drove him to the office of Mr. L. The claimant said that after the incident was reported, he returned to work and finished his workday (the accident happened before noon). He said he continued to work because he believed the pain would go away.

The claimant said that the pain was stronger the next day and he went to a hospital emergency room (ER) twice where x-rays were taken the second time. He said he was told he had a spasm. He said he went twice because Mr. L asked him after the first visit to bring a release in order to go back to work. The claimant said that when he gave the doctor's papers to Mr. L, he was told by Mr. L that he had arthritis.

The claimant said that he returned to the employer at some later time to request light-duty work, but Mr. L told him there was none available. The claimant had returned to work for the U.S. Census on April 24, 2000, making \$10.00 per hour for about 25 to 35 hours a week. The claimant said he had not followed a full-duty release given to him effective January 3, 2000, by the hospital ER because of the medication he was taking.

The claimant was asked whether his safety training taught him to fill out a report at the end of each workday indicating whether or not he was hurt on that particular day. He said that his training did not include such instruction. The claimant said that he filled out the forms that were shown to him and indicated whether he was hurt or not. As to the \_\_\_\_\_, injury form, the claimant said that the "no injury" designation on this form had been falsified. Asked more about forms for December 27, 28, and 29, he said that the writing on the 27th was his, but did not think the forms for the 28th and 29th were his handwriting in the part checked "no" injury.

Asked what he had actually written on these forms on these two days in response to whether he injured himself, he said he could not remember. He said he "could have" left them blank but said several times he did not recall.

The claimant's doctor, Dr. E, testified at the CCH. He said that he had been a designated doctor for three and one-half years. Dr. E had started treating the claimant on January 7, 2000. He said that x-rays taken a few days before showed degenerative changes at L1-2. Dr. E said he was not really concerned with this because claimant's main area of complaint was the lower lumbar spine. Dr. E said that he believed this condition to be basically asymptomatic.

Dr. E said that his orthopedic examination of the claimant indicated disc bulges affecting the L4-5 and L5-S1 nerve roots, producing radiating pain into the lower extremities. He said that nerve root compression at L1-2 would produce symptoms in the upper and front part of the leg, not the back. He said that the orthopedic tests he did included the straight leg raise test, dorsi-flexion of the toe, Valsalva test, and various others. He had not performed an EMG or range of motion testing. Dr. E agreed that the x-ray showed the L5-S1 area to be normal but that an x-ray would not show a disc bulge.

Dr. E said he had recommended an MRI but one had not actually been performed; that the carrier "just flat-out denied it." He said that claimant was in active rehabilitation. Dr. E had taken the claimant off work when he first saw him, and later released him to light duty on January 29, 2000, with a lifting restriction of 15 to 20 pounds. He said that he believed that claimant's back problem was the result of the work-related injury as described to him.

Mr. M testified that he spoke Spanish and English to the claimant, who seemed to have no problem understanding him. He explained that every worker filled out "sign-in, sign-out" safety sheets every day in which they would indicate yes or no in response to a question about being injured that day. Mr. M said that an on-site foreman assured that the forms were completely filled out as they were turned in. He said that no foreman ever indicated that the claimant had not completely filled out these sheets.

Mr. M agreed that on December 29, claimant came up to him and said his back was sore and he wanted some aspirin, but did not indicate that he was hurt on the job and Mr. M did not ask. Mr. M said that claimant told him he had had sore backs before and it was "no big deal." He said that claimant returned to his regular duties which involved lifting. Mr. M did agree that he took claimant to see Mr. L, who was the safety manager. Mr. M was questioned at length about his knowledge of the sign-in, sign-out safety sheets and how they were processed.

Mr. M had no explanation as to why he decided to write out a statement on \_\_\_\_\_, describing how claimant came to him with complaints of back soreness. He denied that he

did this because he believed a work-related injury might be claimed, although he said he made the notes for future reference.

Finally, Mr. L testified he saw the safety sheets before anyone went home from a job and there were no incomplete forms turned in for the three December days discussed at the CCH. Mr. L was also extensively questioned about the sign-out procedure and that he would follow up on blanks or affirmative indications of injury. Mr. L also prepared notes, on \_\_\_\_\_, and January 3 and 5, 2000, of his contacts with the claimant. He agreed that his note of December 29 recorded that he specifically asked claimant on that day if he were injured on the job, and the reply was "No." He said that the claimant did not claim a job-related injury until January 5.

Mr. L said that a basic safety test was administered in English as part of the pre-employment process and that claimant would not have passed the test if he did not understand English.

A medical record from one Dr. LW dated January 5, 2000, who was apparently associated with a family clinic, noted that claimant had pain in the lower left back for two weeks and had been seen in the ER two weeks ago. The hospital records in evidence are not those which record any history of injury or initial notations about the condition for which claimant sought treatment; they are only discharge notes in a "boilerplate" format recommending what claimant may do for a back strain. Dr. E's initial medical report records a history of claimant lifting lumber to his shoulder and feeling a "pop."

Concerning the translation of testimony, which was raised as a point of error, the only problems evident from the record were resolved. During cross-examination of the claimant, the attorney for the carrier was admonished to wait to allow for translation of the claimant's response before asking the next question. The hearing officer also indicated in the CCH that she spoke both English and Spanish. There was also a sequence where claimant was asked about a "January 31st" release by the hospital and it was so translated, but the carrier's attorney admitted error as to this date which was corrected in subsequent questions. At another point, the hearing officer also clarified translation of a question regarding the filling out of the daily safety forms.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977).

A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

We reviewed the record and found that matters relating to translation were resolved when they arose, and would be mitigated given that the trier of fact was bilingual. Furthermore, the claimant testified at the CCH that he could not recall whether he left the safety sheet injury form blank or not. The entire procedure surrounding these forms and their completion was gone into at length. The fact that the hearing officer resolved the evidence in a manner against the claimant's position does not mean that contrary evidence was ignored. We affirm the hearing officer's decision and order.

Susan M. Kelley  
Appeals Judge

CONCUR:

Kathleen C. Decker  
Appeals Judge

Thomas A. Knapp  
Appeals Judge