

APPEAL NO. 001398

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 May 18, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, contending that these determinations are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The parties stipulated that the claimant gave timely notice of his claimed injury.

DECISION

Affirmed.

The claimant testified to a history of back problems for which he received treatment for a number of years. Medical records of Dr. W, the treating doctor, reflect an initial visit of January 6, 1999, for complaints of low back pain. Treatments continued on a biweekly basis. According to the claimant, on _____, he fell while loading pipe. He contends that this incident caused a compensable low back injury.

Dr. W's billing records describe treatment (five procedures) on _____, but her narrative notes do not contain an entry for this date. Notes of a visit on July 3 made no mention of a fall at work, but say the claimant's mobility "seems to have improved since last visit" (on June 19, 1999). No later entry reflects an injury at work, but comments are made about back pain subsiding and increasing. Dr. W's Initial Medical Report (TWCC-61) for this claimed injury is dated October 1, 1999, but no "date of visit" is entered on the form. On December 6, 1999, Dr. W wrote that the claimant suffered a fall at work on or about _____, and "[o]n his next visit to my office, there was a marked difference in the amount of pain he was experiencing in comparison to his regular care, antalgic posture with difficulty walking, and difficulty getting on and off of the treatment table." Dr. W referred the claimant to Dr. A. He diagnosed lumbar herniation "secondary to repetitive bending and lifting at work combined with a congenial small spinal canal." He also wrote that the injury on _____, aggravated his symptomatology.

Dr. N reviewed the medical records and on February 24, 2000, examined the claimant at the request of the carrier. He concluded that the claimant's condition was degenerative without indication of any injury on _____.

In a recorded statement of September 13, 1999, the claimant said his back had hurt for about a month and gradually got worse. When asked if he could pinpoint a specific incident like a "slip and fall," he recalled an incident hooking up an air compressor when he slipped and fell but could not recall the date. He also denied that he hurt his back helping his daughter move.

The claimant had the burden of proving he injured his back as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so presented a question of fact for the hearing officer to decide and could be proved by his testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer commented that the claimant's testimony "seemed somewhat credible," but "was difficult to reconcile some inconsistencies between his testimony and information contained in (or absent from) his medical records." Examples were the absence of a narrative entry by Dr. W for _____, or references in subsequent entries to an injury; the absence of a date of visit in Dr. W's TWCC-61; and Dr. A's initial reference to a repetitive trauma, not a slip-and-fall, injury. She concluded that the claimant was not persuasive and did not meet his burden of proof.

In his appeal, the claimant argues that there was "no direct evidence from the Carrier to dispute this factual account on how the Claimant was injured." In response, we stress that the claimant had the burden of proving a compensable injury; the carrier had no similar burden of disproving a compensable injury. The claimant also argues that the medical evidence supported his position; that the absence of a reference to a _____, visit in Dr. W's narrative should not be considered controlling; and that Dr. W, in her letter of December 6, 1999, cleared up any confusion

While the claimant's interpretation of the evidence is plausible, Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, the hearing officer evaluates all of the evidence and determines what facts had been established. In this case, the hearing officer was not persuaded by the claimant's evidence, in light of the difficulties she pointed out, that he sustained an injury as claimed. 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 of the credibility of the evidence for that of the hearing officer. Rather we conclude that the decision has sufficient evidentiary support.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge