

APPEAL NO. 001403

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 17, 2000. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____. In his appeal, the claimant essentially argues that the hearing officer's injury determination is 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 loading a box onto a cart as part of his duties of checking freight for the employer, when he developed severe low back pain. The claimant acknowledged that he had sustained a compensable low back injury in 1995 while working for the same employer; however, he maintained that he sustained an aggravation injury on _____. On December 3, 1997, the claimant completed a form entitled "Employee's Notice of Injury or Recurrence" for the employer. On that form the term "recurrence" is circled in three locations and the phrase "lifting boxes" is used in response to the question asking for a description of how the "recurrence" occurred. A December 3, 1997, supervisor's report prepared by Mr. B, employer's personnel manager, similarly states that the claimant "came into my office to report that he had set up a doctor's appt on 12/4 due to reoccurrence of same injury that he had in 1995."

On December 4, 1997, the claimant had an appointment with Dr. O, who was his treating doctor for the 1995 injury. There is no mention of the claimant's having sustained an injury on December 1st in Dr. O's progress notes from the December 4th visit; rather, Dr. O states that the claimant "informed me that the reason for his presence today was to discuss the impairment given by Dr. Benjamin Thompson [Dr. T] in addition to renew his medications." Dr. O diagnosed chronic lumbosacral syndrome and referred the claimant to either Dr. M or Dr. Mo for further treatment, stating that there was nothing further he could offer the claimant. The claimant saw Dr. Mo on February 23, 1998. Dr. Mo's report gives a history of the claimant's having sustained a back injury in October 1995 and does not mention a _____, incident. Dr. Mo stated that the claimant's examination was "relatively unremarkable" and recommended continued conservative treatment.

The first mention of the _____, incident in the claimant's medical records appears in Dr. C progress report for a November 17, 1998, appointment. In an April 6, 1999, letter, Dr. C addressed the issue of whether the claimant sustained a new injury on _____, or whether he continued to suffer the effects of his prior compensable injury and the degenerative disc disease in his spine. Specifically, Dr. C stated:

[Claimant] sustained an on-the-job injury dated 12-02-97 [sic]. It is my considered opinion based upon my education, training, experience and review of that [sic] records, that he sustained a neck sprain, a back sprain, a thoracic sprain, an on-the-job injury. It is further my opinion that he has degenerative disc disease. It is my considered opinion that that injury sustained on that date aggravated his pre-existing condition and caused the other condition aforementioned.

The claimant has the burden to prove that he sustained a compensable injury on _____. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question 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. 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 did not sustain his burden of proof. In her discussion, the hearing officer emphasized the fact that the _____, injury is not mentioned in the claimant's medical records until November 1998 and that the reports prepared by the claimant and Mr. B on December 3, 1997, reflect that the claimant has had a reoccurrence of the symptoms from his 1995 injury as opposed to having sustained a new injury. The hearing officer properly considered those factors in making her credibility determination. The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant by determining that he did not sustain a compensable injury on _____. Our review of the record does not reveal that that 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 the hearing officer's injury 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 hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge