APPEAL NO. 001641

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 June 23, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from January 31 to the date of the CCH.

The appellant (carrier) appealed, contending that two different Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) forms give different dates of injury and a slightly different description of the accident, that the treating doctor's reports give differing dates of injury, and that the claimant failed to establish "a causal link between his work and his illness." The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds to the points raised by the carrier and urges affirmance.

DECISION

Affirmed.

As the hearing officer notes "the claimant had difficulty with names and dates." The claimant is 73 years old and works for (employer). The claimant testified that on _____ he felt a "little pain on the back" but continued working. The claimant testified that subsequently on _____ (there was confusion in the claimant's testimony whether that was a Thursday or Friday; actually it was a Friday), he was lifting a box containing 12 plaques onto an inspection bench when he hurt his low back. The claimant said that he went to the lunchroom where "the manager" asked him what was wrong and told him that he looked pale and that the claimant told the manager he had hurt his back. The claimant apparently continued working the next several days. The claimant said that he called Mr. O (perhaps "the manager" or at least a supervisor) "the next day"; however, Mr. O's statement said that the claimant called him on January 28 and again on January 29 saying that he (claimant) "was sick" and asking about insurance. In the last sentence, Mr. O specified the sickness saying "(he was feeling pain on his back!)" (emphasis in the original). The claimant said that he called the doctor on January 22 but was unable to get an appointment until January 31.

The claimant sought treatment with Dr. C on January 31 and in an Initial Medical Report (TWCC-61) and narrative dated that date Dr. C recited both the _____ pain and the _____ event lifting boxes onto a bench, diagnosed a lumbar sprain/strain and took the claimant off work. The claimant began a course of therapy and in evidence are a series of progress notes through May 1.

The claimant filed a TWCC-41 dated March 1 reflecting a _____ injury "lifting trophy" with the first missed day of work as February 26 and another TWCC-41 dated January 31 reflecting a _____ injury "lifting heavy boxes." Other work status reports from Dr. C variously give the date of injury as _____, and "_____/_____." In a clarification report dated February 29, Dr. C wrote:

> I am writing you to amend my initial TWCC-61. On my initial narrative I wrote that on _____ the patient was lifting boxes from one bench to another when he felt a sharp pain in his lower back and left groin. The description of the injury is correct however the date was not. The date of injury should be _____. This would be on a Friday, which is when he sustained the injury as described.

As previously noted, the hearing officer commented that the claimant had difficulty with names and dates and, further, the hearing officer said that the medical evidence was "not particularly compelling" but merely recited the history provided by the claimant. Nonetheless, the hearing officer concluded:

> The claimant's testimony was nevertheless credible as to the description of the claimed injury incident, and his version of events was eminently reasonable and consistent with the claimed back injury. Given his relatively advanced age (73), and the nature of his work (at least occasionally lifting 30-lb boxes of trophies and plaques), the claimant's testimony and the doctor's notes are also sufficient to sustain the claimant's burden on the disability issue.

The carrier appeals, pointing out the different dates of injury appearing in the medical reports and on the TWCC-41s and that one TWCC-41 gives a description of "lifting trophy" and another as "lifting heavy boxes." These discrepancies were brought to the hearing officer's attention and we have many times held that 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 obviously considered all the evidence in arriving at his conclusion that the claimant sustained a compensable injury lifting a box of trophies or plaques on _____. Lastly, the carrier argues that the claimant left work because he was "sick" and there was no causal link between the claimant's illness and his work. While two of the handwritten statements do refer to the claimant saying that he was "sick" and "wasn't feeling well," both statements also refer to

the cause of being sick and not feeling well was the claimant's back was hurting. This is another inconsistency or contradiction for the hearing officer to resolve.

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 respective witnesses 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:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge