APPEAL NO. 001670

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 March 7, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on _____; that the claimant did not have disability; and that the claimant did not have good cause for his failure to appear at the CCH on April 3, 2000. The appellant/cross-respondent (carrier) appealed the finding of a compensable injury, contending that this determination is against the great weight and preponderance of the evidence. The appeals file contains no response to the carrier's appeal. The claimant appealed the findings of no disability and no good cause for the claimant's failure to appear at a prior scheduled CCH, contending that these determinations are wrong and against the great weight and preponderance of the evidence. The carrier responded to the claimant's appeal, asserting that these determinations are correct and should be affirmed.

DECISION

Affirmed.

The decision and order of the hearing officer contains a comprehensive recitation of the evidence which need not be repeated in detail. The claimant worked at a computer desk as a service representative. He testified that on _____, as he twisted and reached down to his left to pull a three-ring binder out of his desk drawer, he felt a pain in his lower left back. He saw Dr. S on August 24, 1999. Dr. S's diagnoses included lumbar sprain/strain.[1] The claimant was off work from August 24, 1999, through February 7, 2000, pursuant to Dr. S's duty excuses and the claimant's opinion that he could not return to his job earlier.

The carrier presented evidence that suggested a dispute with the claimant's supervisor immediately preceded this claimed injury; that if the claimant did pick up the binder it only weighed about one pound; and that Dr. S was really treating an August 24, 1999, injury, not an _____, injury. There was also evidence that the claimant traveled to Los Angeles for a vacation in late September 1999 during which he carried his luggage and did an amount of walking and visiting tourist sites. The claimant concedes he went on the trip, but said he experienced low back pain which he could accommodate because he was not in a work environment.

The claimant had the burden of proving both a compensable injury and disability as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Both issues presented questions of fact for the hearing officer to decide and could be proved by the claimant's testimony alone if found credible

[1]As of the date of this visit, the claimant filed a separate claim for a compensable repetitive trauma injury to the upper back and neck. The subject of these proceedings is limited to the claimed low back injury.

by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) further provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer considered the evidence and the arguments of the parties as to why their evidence was more persuasive. He concluded that the claimant established he sustained a compensable low back injury, but that he did not have disability primarily because of the sedentary nature of his work, the type of injury he sustained, and because the claimant's activities on vacation shortly after the injury appeared to be inconsistent with a claim of disability. Clearly, the evidence was subject to varying inferences on each issue presented for resolution. 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.

The claimant's only excuse for not appearing at the previously scheduled CCH was that he got the dates "mixed up." The hearing officer found that this did not constitute good cause. We find no error in that determination.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge