APPEAL NO. 001694

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 26, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, contending that these determinations were 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. All dates are in 2000, unless otherwise stated.

DECISION

Affirmed.

The claimant testified that on the afternoon of _____ he injured his low back while pulling cable from a reel for metering and transfer to another reel. He said he reported his injury right away to Mr. H, his supervisor, who told him he had to finish his shift that day. The next morning, he said, he could not get out of bed and called Mr. C, a second-level supervisor, and told him "what happened." He worked the next day, a Friday; went to Dr. G, his treating doctor, the next Monday and was taken off work for approximately one month when he returned to light duty. He denied telling anyone that he injured himself while placing a reel of cable onto a pallet.

Mr. C testified that he completed an accident report after a telephone conversation with the claimant on or about February 8 and that he reported what the claimant described as an injury from lifting the reel onto a pallet. He also said that the claimant had earlier problems in the cable-cutting department and had expressed a desire to transfer. Mr. H said that he saw the claimant on the claimed date of injury, but the claimant did not say or look like he was hurt. According to Mr. H, the claimant told him his back was "tired," but did not say why. A week later, he said, he found out that the claimant attributed his back pain to an injury at work from putting a reel on a pallet and never mentioned pulling cable.

The claimant was eventually diagnosed with lumbar and thoracic sprain. A pain drawing of the visit with Dr. G on February 8 reflects lumbar as well as thoracic and cervical pain. The claimant insisted at the CCH that he was only claiming a low back injury.

The claimant had the burden of proving he sustained a compensable injury 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 deemed credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer commented that he did not find the claimant credible primarily because of inconsistencies in his statements about how the injury occurred and because his assertion of cervical pain was not supported by any

mechanism of injury provided by the claimant. In his appeal, the claimant contends that these determinations should be reversed because the hearing officer "replace[d] valid medical opinions with his own"; because he placed too much emphasis on the distinction between pulling a cable and placing a reel of cable on the pallet when these were essentially one "dynamic"; and because the hearing officer improperly relied on a complaint of a cervical injury to judge the claimant's credibility when the claimant was not claiming a cervical injury. We cannot agree that the hearing officer improperly substituted his own lay opinion for a medical opinion. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In his role as fact finder he could accept or reject any of the evidence in whole or in part. This includes medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The medical opinions of causation reflect only what the claimant told him. The hearing officer simply found the medical evidence no more persuasive than the underlying credibility of the claimant in giving an account of the mechanism of his claimed injury. He was in no way required as a matter of law to accept as credible a medical opinion of causation. While the claimant argues on appeal that he was essentially engaged in one process that caused his injury, at the CCH he was repeatedly specific that he hurt himself pulling cable, not putting a reel on a pallet and that the latter account of how he was injured was incorrect. Clearly, the distinction in the elements of the process that the claimant was involved in was introduced by the claimant at the CCH and the hearing officer could properly rely on this account as the description of how the claimed injury occurred. Similarly, there was evidence in the medical reports that the claimant presented with complaints of cervical pain as well as low back pain. The claimant's testimony that he did not sustain a cervical injury was properly weighed against the information in these medical reports in arriving at a determination of the claimant's credibility.

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 or evidence for that of the hearing officer. Rather, we find the evidence sufficient to support the determination that the claimant did not sustain a compensable injury on _____.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

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

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge