APPEAL NO. 001831

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 July 11, 2000. The issues involved whether the claimant, who is the appellant, sustained a compensable injury on _____; whether he reported an injury to his employer within 30 days and, if not, whether there was good cause for this failure to report; whether he had disability resulting from the alleged injury; and whether he made an election of remedies by receiving benefits under his group health plan.

The hearing officer held that there was no election of remedies and that determination has not been appealed. However, the hearing officer found that the injury was not caused by an incident at work on _____, and that the claimant did not, therefore, sustain a compensable injury. The hearing officer further found that the claimant did not give timely notice and had no good cause for the delay.

The claimant appeals the adverse findings as against the great weight and preponderance of the evidence. The claimant, asserting that timely notice was given, also asks that good cause be found. The respondent (self-insured) responds that all determinations on the appealed matters are supported by the evidence and the hearing officer's primary role as the finder of fact.

DECISION

We affirm the hearing officer's decision.

The hearing officer has summarized the evidence and we will only briefly repeat facts here for ease of reading. The claimant worked for the linen service at the self-insured's hospital facility. He first stated that he "drove small trucks," apparently with laundry carts. He said that he was required to push the carts once delivered to the laundry room. He asserted that he pushed carts eight hours a day.

The claimant had a previous _____ back injury resulting in surgery. He continued to have variable pain from that injury and sometimes would have to go to the emergency room. The claimant said that on _____, he felt "really bad." He said that he was injured "pulling the carts and weighing them." The claimant asserted that he told his supervisor, Ms. H, about the injury that day and the next day but that she was not really paying attention and wanted him to work overtime.

The claimant agreed that he was being treated for his low back and left leg and was in therapy prior to _____. He had a second surgery in late October 1999. Records from the self-insured hospital showed that the claimant was receiving pain killing medication in the spring and summer of 1999 and underwent 14 physical therapy sessions for a month beginning August 2 and ending a few days prior to the injury.

Ms. H testified that the claimant did not tell her on _____, that he had injured himself on the job. Ms. H said that when the claimant called in the next day about missing work, he said his leg was hurting and he was going to the doctor. She said she found out that he was claiming a work-related accident when she saw him after his surgery. While she could not recall the date on testimony, her recorded statement on November 23, 1999, indicated that it was a week or two before that statement was given.

The claimant was first seen by Dr. N, whose first notes do not make mention of an incident or any work relationship. It appears that on September 23, the claimant stated that this was a work-related injury. A medical record dated October 13, 1999, from Dr. C noted that the claimant contended he had developed right- sided back pain with radiation to his leg four weeks ago while pushing a linen cart. Dr. C observed that an October 1999 MRI showed a herniated disc at L3-4, the level above the claimant's _____ injury. The claimant's operative report showed that there was a large, free disc fragment to the left at L4-5 in addition to the L3-4 herniation. However, medical records present for the months prior to the claimed date of injury show a host of back-related problems for which the claimant was treated, including loss of bladder control, loss of sensation in the extremities, and lumbar pain.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The facts set out in a medical record are not proof that a work-related injury in fact occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Without the threshold finding of a compensable injury, there is no "disability" as defined in the 1989 Act. We cannot agree that the decision on injury and disability is not sufficiently supported.

Concerning the timely reporting of the injury, the hearing officer could choose to believe Ms. H. Although the fact that the claimant sought medical treatment from the self-insured hospital where he was also employed had the potential to serve as notice, there was no evidence clarifying if persons to whom a report was made qualified as supervisory personnel. Because the claimant's theory was that he timely reported his injury, there was essentially no development of the evidence as to matters that would constitute "good cause" up until reporting of the injury in November.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge