

## APPEAL NO. 001874

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 13, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that he has not had disability as a result of his compensable injury. In its appeal, the appellant (carrier) argues that the hearing officer's injury determination is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant. The claimant also did not appeal the hearing officer's determination that he has not had disability and that determination has, therefore, become final.

### DECISION

Affirmed.

Because of the limited nature of the issue before us on appeal, our factual recitation will be limited to those facts most germane to the injury issue. The claimant testified that on \_\_\_\_\_, he was working as a mechanic for the employer; that he stooped down to tilt a metal pad, weighing approximately 70 to 75 pounds, because it had some liquid on it; and that as he tilted the pad, he felt a "pop" across his low back. The claimant stated that he reported his injury to Mr. B, his supervisor, shortly after it occurred and told Mr. B that he did not need to go to the doctor. He further testified that by the following morning, his back pain was more severe; that he went to work and told Mr. B that he needed to see the doctor; that Mr. B asked him if he had a doctor; and that when the claimant responded that he did not, Mr. B sent him to a clinic.

At the clinic, the claimant was diagnosed with a lumbar strain/sprain. He was treated with medications and physical therapy and given a light-duty release. The claimant stated that he continued working after his accident until March 8, 2000, when his employment with the employer was terminated for alleged insubordination.

Mr. B and Ms. K testified that they observed many inconsistencies in the claimant's behavior following his alleged injury, which made them believe that the injury was fabricated. Specifically, Mr. B and Ms. K stated that when the claimant was asked to demonstrate how he had been injured, he was able to stoop without any difficulty and that during the period of time the claimant was working light duty he was observed walking with a normal gait at some times and a short time later was barely able to move. Notes from the claimant's physical therapy state that the claimant was reluctant to perform his exercises; however, he was observed bending over to pick up his keys from the floor without difficulty.

The claimant had the burden to prove that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's injury determination is against the great weight of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of his claim. The carrier emphasized the same factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_, is supported by sufficient evidence and our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain. Although another fact finder may well have drawn different inferences from the evidence, which would have supported a different result, that does not permit us to disturb the decision in this case. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Robert W. Potts  
Appeals Judge