APPEAL NO. 001925

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 July 18, 2000. The issues at the CCH were whether the claimant sustained a compensable injury on _____, and had disability from this injury. The hearing officer determined that the claimant was not injured on either _____ or _____, as claimed, and did not have disability. The hearing officer further found as fact that the claimant was able to earn a wage equivalent to his wage for the period from April 12, 2000, through the date of the CCH.

The claimant has appealed, arguing that the hearing officer did not understand or did not adequately weigh all the evidence. The carrier asserted that the claim was filed in retaliation for disciplinary action.

DECISION

Affirmed.

The claimant contended he injured his entire back while working on an assembly line, using a hoist to lift motor vehicle seats, for (the self-insured employer) on _____. He asserted that he was using a hoist that had a defective brake mechanism and needed to be pushed harder, using handlebars that were chest high. The date of _____ came up because this was the date that the claimant sought medical treatment for his injury. He worked the shift that "straddled" midnight.

The hearing officer has fairly summarized the evidence given by the claimant and we will incorporate it by reference. A review of the evidence shows that the hearing officer's statement that the claimant never really explained how the accident occurred is correct. The claimant's theory of recovery appeared to be that he was somehow injured due to the need to forcefully push a hydraulic hoist during a period of a few hours when the brake mechanism was out. (There was conflicting evidence as to the duration of the failure.) On the other hand, the claimant also generally testified that the job he performed was "repetitive" and that statement's to the contrary were inaccurate.

The claimant agreed telling his supervisor, Mr. G, in the course of an angry disagreement, that if he had to work "like this", he would just "go out on workers' compensation". The claimant asserted a conflict in philosophy between him and Mr. G that caused him to speak in anger. However, the claimant explained that Mr. G already knew he was injured because he had given him a medical pass, and he was not stating that he would falsify a claim of injury. Mr. G said that the claimant threatened on the night of the 23rd to go out on workers' compensation during the course of a discussion about his performance, and that it was not until after this statement that the claimant asked him for a medical pass, saying he hurt his back. Mr. G said that the reasons for seeking a medical pass were not up to the discretion of the supervisor, who was to record exactly what he

was he was told by the employee as to the reason for the pass. Mr. G said that he put claimant on notice that night for slow performance which stopped production ("running out" the seats).

Mr. B testified by telephone. He was not currently employed by the self-insured employer, although he had been in February 2000. Mr. B said that he overheard the conversation between the claimant and Mr. G and he supported Mr. G's version of what was said. He said that claimant was told that he would be subject to disciplinary action and then made a comment that he would "go out his way and not your way" in response to Mr. G, indicating his way meant workers compensation. Mr. B was only aware that earlier that evening, the claimant had a cut on his shoulder which he said happened at home.

Additionally, the claimant also testified that on February 24, 2000, he had locked himself out of his house and climbed over the six foot high privacy fence between his property and his neighbor's. He slipped and injured his forearm, and saw his family doctor that day for this injury. He agreed that he did not report his asserted back injury to the family doctor. The claimant said he was taken off work by his family doctor. Mr. G said that the claimant did not show up for work at all on February 24th or call in; and that the claimant returned the following day with a medical excuse for his arm injury. Mr. G said that the first he heard of a workers' compensation claim by the claimant was on February 29th or March 1st.

The claimant was referred by a coworker who was a workers' compensation claimant to his two main treating doctors, Dr. D, and Dr. H. He changed doctors around the time that Dr. D gave him a modified release to work, which he did not take to the self-insured employer. The claimant said he was undergoing work hardening and would return to work when the self-insured employer's plant re-opened in August 2000.

In addition to evidence summarized in the decision there was considerable testimony concerning the management style of Mr. G. There was also evidence that claimant had violated various shop rules relating to job performance. Mr. G testified that the claimant was not actually installing seats in a vehicle (as the claimant indicated in his testimony) but was merely stacking them on another conveyor to go to the assembly area. Mr. G indicated that this was a form of light duty as the result of a knee injury the claimant sustained in January 2000. Mr. G said there were repeated problems with the claimant's speed of work and he had caused the entire production line to be held up on occasion.

The nature of the injury was diagnosed by Dr. D as "strain". A cervical MRI from May 16, 2000, showed minimal spondylosis. The claimant applied for and received disability benefits, for which he was examined by Dr. F, a doctor chosen by agreement between the self-insured employer and the union. A one-page check list from Dr. F recorded that the claimant "was unable to work" as of May 10, 2000. As noted by the hearing officer, the claimant was essentially treated for subjective reports of pain and some mild muscle spasms.

The burden is on the claimant to prove that an injury occurred in 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 fact that the hearing officer has made inferences or conclusions unfavorable to the claimant's claim does not mean that he "ignored" or misunderstood evidence.

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 either for the decision that no injury occurred or for the decision that there was no disability. Both determinations are sufficiently supported by the record, and we therefore affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge