APPEAL NO. 001989

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 25, 2000. The issues at the CCH were whether the respondent, who is the claimant, sustained an injury in the course and scope of his employment on _____, and whether he had disability as a result.

The hearing officer held that the claimant injured his back and had disability from this injury beginning on January 27, 2000, and continuing through the date of the CCH.

The appellant (carrier) appeals and recites evidence that it states constitutes a great weight and preponderance of the evidence against the decision. The claimant responds by setting out evidence favorable to the decision.

DECISION

We affirm.

The claimant worked for (employer) for 14 years, although he stated his usual job did not entail working in assembly. However, on _____, as he was working in the assembly/disassembly section, he said he "caught" a pump that weighed about 80 pounds, went to set it down on a pallet, and felt sharp right leg pain. The claimant said that he mentioned this to his coworker. The claimant agreed that he worked another day, but said that he felt the pain would go away. He first sought medical treatment from a clinic on January 27 and said that he related the events leading to injury to them. The records of the clinic do not show this and state that the claimant first noticed back pain four days earlier.

The claimant agreed that he had back problems in the past, in 1994 and 1998, but said he never had leg pain. His treating doctor was Dr. G. The claimant testified that he could not return to work, although he hoped to do so in the future.

There was evidence to refute how immediately the claimant reported his injury or how clear he was in expressing the incident to his supervisors. However, there is in evidence an absence sheet showing that he was out on January 27 due to an "injury in the plant." No one for the employer was able to state for sure who completed this form and when it was completed, but the claimant's supervisor, Mr. V, stated that he did not believe it had been created at a date later than the 27th. The general manager for the employer, Mr. M, testified to a meeting a week after the incident in which he and other managers set out to investigate the incident. He subsequently met with the claimant and, although he contended that the events leading to the injury were first detailed to him at the CCH, he agreed that the claimant said he felt he had been hurt "in assembly." Mr. V's recollection of this meeting was that the claimant was not sure if he had been hurt at work or not.

Records from the employer show that the claimant missed time from work in May 1998 due to a strained lower back. The medical records in evidence show that the claimant had radiating pain down his right leg, and was treated essentially for a lumbar strain and sciatica. While Dr. G's medical report refers to an MRI, there is none in evidence. An x-ray from January 27 opined the existence of degenerative lumbar disease. Off-work slips from the claimant's doctors are in the record.

This record represents the classic case where the finder of fact must resolve conflicts in the testimony and other evidence and weigh credibility and materiality. We will not disturb the fact finder's resolution of the evidence absent a great weight of evidence contrary to the decision, even where different inferences may be drawn. 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 is the case here, and affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge