

APPEAL NO. 002052

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 August 1, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____. In its appeal, the appellant (carrier) argues that the hearing officer's injury determination is against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that he began working for the employer, a nursery, in 1993. He stated that he maintains equipment and "does whatever needs to be done." The claimant acknowledged that in _____ he sustained an injury to his low back, neck and shoulders when he fell 16 feet from a ladder, landed on his feet and fell backwards to the ground. The claimant stated that he returned to work light duty for the employer and on _____, was asked to unload a van full of bags of dirt which weighed 40 to 50 pounds each. He testified that on the day following his repetitive lifting of the heavy bags of dirt, he developed intense back pain that kept getting worse and was of a different nature than the pain he had following his _____ injury. On cross-examination, the claimant stated that he was not claiming that he hurt his back in the _____, injury at work but was claiming a right leg injury. On redirect examination, the claimant, who testified through a translator, stated that, based upon the meaning of the term "back" in English, he did injure his low back lifting the bags of dirt at work on _____.

The claimant first sought medical treatment for the _____, injury on August 23, 1999, from Dr. I. Dr. I diagnosed lumbar strain/sprain and sciatica, and prescribed medication and physical therapy. Dr. I referred the claimant for a lumbar MRI on October 7, 1999, which was interpreted as revealing a two millimeter (mm) posterior bulge of the annulus fibrosis at L4-5 and a 4 mm bulge of the annulus fibrosis at L5-S1. A January 28, 1999, MRI was interpreted as showing that the claimant had "mild disc bulging at L4-5" and "moderate disc bulging at L5-S1 with degenerative disc changes" On October 13, 1999, Dr. O, an orthopedic surgeon to whom the claimant was referred by Dr. I, examined the claimant and diagnosed lumbar discogenic syndrome. In a letter dated March 6, 2000, Dr. I opined that the claimant's opined that the claimant's lumbar strain, sciatica, 2 mm posterior bulge of the annulus fibrosis, and 4 mm bulge of the annulus fibrosis are "the direct result of the injury he sustained at work on _____."

The carrier had Dr. W examine the claimant for the _____ compensable injury. On July 21, 1999, Dr. W certified that the claimant reached maximum medical improvement for that injury on January 18, 1999, with an impairment rating of six percent. In the narrative report accompanying his Report of Medical Evaluation (TWCC-69), Dr. W

stated that the claimant's "main symptoms at this time are in his neck and shoulders" and that the "back pain resolved mostly." On March 7, 2000, Dr. W again examined the claimant at the request of the carrier. In his report, Dr. W stated that the January 1999 and the October 1999 MRIs "both appear to be describing the same findings." Dr. W concluded that the _____, incident caused a mild exacerbation of the claimant's back symptoms, but that he related the back symptoms to the _____ injury.

The claimant had the burden to prove that he sustained a compensable injury lifting the bags of dirt at work on _____. 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, decides what weight to give to the evidence, and determines what facts the evidence has established. 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 determinations that the claimant sustained a compensable injury is sufficiently supported by the claimant's testimony and the medical evidence from Dr. I and Dr. O. As the fact finder, the hearing officer was free to credit the evidence tending to demonstrate that the claimant sustained additional damage to his back as a result of lifting the bags at work on _____, over the contrary evidence from Dr. W that there was no additional injury. 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 that determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge