APPEAL NO. 002212

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 August 25, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and had disability as a result.

The hearing officer determined that the claimant injured his cervical and lumbar spine (but not his shoulder) on _____, and had disability from that injury for the period from January 14, 2000, to the date of the CCH.

The appellant (carrier) has appealed, arguing that the evidence from the claimant was conflicting and not credible, and that the hearing officer's decision is against the great weight and preponderance of the evidence. The carrier recites the contradictions and evidence against the claimant's contention. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision based upon our standard of review.

The claimant said he was employed by (employer) in early October 1999 to work as an electrician. The hearing officer's decision inadvertently omitted the indication that the claimant's wife testified for the claimant, and that Mr. V, the employer's owner, testified for the carrier. The claimant said that on _____, he and three other workers were carrying a transformer up a flight of stairs. The transformer weighed, he estimated, about 500 pounds. The claimant missed a step and was jerked. He said he had pain and mentioned it to the others. The others were Mr. R, his assistant, and two employees of the company for whom the employer was doing contracting work, Mr. T and Mr. L.

The claimant said that he continued to work, in pain, and then sought treatment the next week from Dr. B, the family doctor. He said that his boss, Mr. V, loaned him money for this first visit. There were no medical records produced for more than one treatment that the claimant says he had from Dr. B in December 1999. He said he paid cash. The claimant's wife testified that she requested these records but was told that the claimant's file had been misplaced. The claimant said he was told to work as tolerated, but was taken off work January 10, 2000, by Dr. B. His last day of work was January 14, when he said he was terminated. He said that he was unable to physically keep on doing his job.

The claimant went to the emergency room on December 31, 1999, and had no explanation for why the medical record said that he sought treatment for an injury that happened that day at home. However, the mechanism of the injury was cited as pulling on a transformer. The claimant said that Dr. B, who did not handle workers' compensation injuries, referred him to Dr. S, who eventually got approval for an MRI and told the claimant that he had a herniated cervical disc, which was also causing shoulder pain.

Mr. V said that he knew nothing about the injury until January 4, 2000. He said that the claimant's work had not been up to par beginning about the sixth week of the claimant's employment, and that he had received reports of the claimant's possible intoxication on the job, one report being on December 15, 1999. However, he asserted that he did not fire the claimant because he was "adequate" and he had no one to replace him. He said that he had talked only to Mr. T when he investigated the accident, but "saw no reason" to also talk with Mr. R. Mr. L could not be located.

Mr. V said that he had made up his mind to terminate the claimant about the time the claimant stopped showing up on the job, which was January 14, 2000. He agreed that he had periodically advanced $100.00 loans to the claimant, and one was likely made the week of December 13 through 19. Mr. V said that the transformer that the claimant would have been moving would have weighed around 245 pounds.

The claimant agreed that he was involved in a motor vehicle accident on June 14, 1999, which injured his shoulder. He was treated by a different doctor for that injury but was unable to get an appointment with that same doctor right after his December 17 injury, so this is why he sought treatment from Dr. B.

There is no doubt that the evidence was conflicting, but it is the responsibility of the trier of fact to weigh and reconcile such conflicts. 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 claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984).

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).

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

Tommy W. Lueders
Appeals Judge