APPEAL NO. 002236

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 30, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable neck injury on _____, and that he did not have disability. In his appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that on _____, the claimant was involved in an on-the-job accident, when in the course and scope of his employment as a meter reader, he slipped on some stairs and fell to a wooden deck, landing on his back. The claimant stated that he fell forward while climbing the stairs, but that he twisted in an attempt to break his fall and landed on his back. The claimant testified that his fall at work caused an injury to his neck, although he did not realize that he had sustained a neck injury initially.

The claimant first sought medical treatment on November 11, 1999, at a hospital emergency room with complaints of chest pain. There is no reference in those records to the claimant's fall at work; however, the claimant maintained that he advised the care givers at the hospital about the fall. On November 15, 1999, the claimant sought treatment with Dr. S with complaints of chest and stomach spasms and numbness in his right hand and fingers. The claimant testified that he told Dr. S about his fall at work; however, Dr. S's records do not contain a history of the claimant's having fallen at work. To the contrary, in his November 17, 1999, notes Dr. S states that there is no history of trauma to the neck. Dr. S referred the claimant for a cervical MRI on December 4, 1999, which revealed a posterior disc bulge at C5-6 and posterior spurring at C6-7. Dr. S referred the claimant to Dr. A, a neurosurgeon. In a report of December 23, 1999, Dr. A diagnosed cervical radiculopathy and stated that the claimant is a candidate for an anterior cervical discectomy and fusion at C5-6 and C6-7. That report does not reflect a history of the claimant's having fallen at work. Dr. A took the claimant off work at the December 23rd visit. In a December 29, 1999, note Dr. A stated that the claimant had elected to try physical therapy prior to surgery. On February 4, 2000, Dr. A reexamined the claimant noting that the claimant's symptoms had not changed with therapy. In his February 4, 2000, report Dr. A stated:

> [Claimant] now states that he injured himself at (employer) while he was working there and fell onto his back, striking his occipital region without any loss of consciousness. This occurred early in _____.

> He states he had to go to the emergency room for treatment on two occasions, November 10, 1999, and November 11, 1999.
>
> I asked him why he did not relate this to us when he first came to our office on December 23, 1999 and he states he forgot, but I did specifically ask him if he had any trauma and he denied it at that time.
>
> On our history form where we asked if this is associated with an injury, he had put not to his knowledge.

At the hearing, the claimant stated initially that he did not tell Dr. A about the fall at work because he believed that the medical records forwarded from Dr. S's office would contain that history. However, at another point in the hearing, the claimant stated that Dr. A asked him at his initial appointment how he had been injured and the claimant responded that he had fallen at work.

The claimant had the burden to prove that he injured his cervical spine in the fall at work on _____. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presents 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 facts have been 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).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proof. That is, the hearing officer simply was not persuaded that the evidence presented by the claimant established a causal connection between the _____, fall at work and the claimant's cervical injury. The hearing officer emphasized the delay in the claimant's providing a history of his having fallen to his doctors. That factor was properly considered by the hearing officer in making her credibility determination. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable cervical injury on _____, 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. Given our affirmance of the determination that the claimant did not sustain a compensable cervical injury, we likewise affirm the hearing officer's determination that the claimant did not have disability, because the claimant's inability to work was due to the noncompensable cervical injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge