APPEAL NO. 002397

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 September 13, 2000. The issues at the CCH were whether the appellant (claimant) sustained an injury to his lumbar spine; whether he had disability beginning on _____, to the present; the date of his injury; and whether the respondent (self-insured) was relieved from liability for the claim because the claimant failed to give timely notice of injury to his employer pursuant to Section 409.001. The date of injury and timely notice to the employer were stipulated at the beginning of the CCH.

On the remaining issues, the hearing officer held that the claimant was not, in fact, injured in the course and scope of his employment. Because there was no injury, the claimant did not have disability. The hearing officer found as fact that the claimant had not worked since February 17, 2000, for the employer, although this was not attributed to any spinal abnormality as there was none, according to other fact findings of the hearing officer.

The claimant appeals and asserts that the findings of no injury and no disability are against the great weight and preponderance of the evidence. The self-insured responds that they are not and cites supporting facts.

DECISION

We affirm the hearing officer's decision.

All dates are 2000 unless otherwise stated. The claimant testified that he worked for (Employer 1) since May 1988, performing warehouse work. He said that on _____, he was pulling an order and felt a stabbing pain in his lower left back. There were no witnesses. The claimant said he reported the injury to his supervisor, Mr. C, within three hours. The claimant did not seek medical attention until February 17. He said it took this long because he thought his injury was one of those bumps and bruises that would go away. He found that his injury would get more severe as the workday progressed. The claimant said that physical therapy was prescribed, which did not help. He said that work hardening had been recommended.

The claimant said that in addition to his job for the employer, he worked for (Employer 2); time sheets were admitted that showed that he worked from February 2 through 16. The claimant said he worked for Employer 1 for one-half of a day on February 17 and was taken off work when he sought medical treatment. Although he contended he had been kept off work, the only off-work statement in evidence was the one for the 17. The claimant stated that he had been in contact recently with a company in Missouri about being recruited to work for it.

The claimant said that his doctors had told him he had a lumbar strain. He was taken off work by Dr. P on February 17 and not released by any doctor. The claimant

contended his evaluation on February 10 indicated that he "met expectations," which phrase he characterized as above average. He agreed that he went 28 days without medical treatment, but first went after a long meeting which he denied was about his performance evaluation. Under cross-examination the claimant admitted that his evaluation rated him as unsatisfactory with regard to interpersonal relationships. He wrote a five-page response on February 18 detailing unfair treatment. The claimant indicated he was the subject of complaints by "a little group" at work. The claimant's duties had been reduced effective February 1 because the very early morning shift he previously worked was eliminated.

Asked why no medical records were produced for visits after late March from his treating doctor, Dr. B, the claimant replied that he had given them to his attorney. A record from Dr. M, a rheumatologist, was admitted over objection from the self-insured. The claimant said that the last time he had seen Dr. B was July 14. Dr. B was associated with other doctors at (a medical clinic) whom the claimant had seen before he was treated by Dr. B.

Mr. C testified that the claimant indeed reported a pain in his side to him on January 19. Mr. C said he filed it, but assumed it was one of many bumps and such that happened in a warehouse. He said that the claimant continued to work until February 17 with no apparent problems. Mr. C was not familiar with the meeting on that date, but agreed that the claimant had problems getting along with his coworkers.

Ms. M was manager of the warehouse. She was the manager who met with the claimant on February 17 about his evaluation when she understood he had complained about it and would not sign it. She said that the claimant wanted aspects of his rating changed and management did not agree. She said that after meeting an hour, the claimant brought up the alleged injury of January 19. Mr. B, the administrative manager for the employer, testified that light-duty work was available.

On March 21, a doctor associated with Dr. B stated that the claimant was unable to work due to pain. Dr. K wrote on May 31 that he was not sure why the claimant was having such prolonged, persistent back pain in spite of injections, and suggested that the claimant be evaluated for arthritis. A March 14 MRI was reported as normal in all respects.

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 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 hearing officer is the sole judge of the relevance, the 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).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge