

APPEAL NO. 002429

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 September 20, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability as a result of his compensable injury from May 13 to May 16, 2000, and from May 19, 2000, through the date of the hearing. In its appeal, the appellant (carrier) contends that those determinations are against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a prior compensable injury on _____, and that the claimant returned to work for the same employer following that injury on May 8, 2000. The claimant testified that he was assigned to the instrument panel line and that the job was not within his light-duty restrictions. However, the claimant also testified that he was not having back problems when he returned to work with the employer on May 8, 2000, and that his lack of residual problems was supported by the fact that he had been assigned a zero percent impairment rating (IR) for the 1999 compensable injury. The claimant testified that on _____, he was bending over to get a hydraulic lift, which he used to lift an assembled instrument panel off the line; that he felt a shooting pain in his shoulders, arms, upper back, lower back, and legs; and that he was not able to straighten up for a period of time. The claimant saw the employer's nurse on May 16, 2000, and she recorded complaints of low back pain only, although the claimant maintained that he complained about all of his symptoms. The claimant stated that he stopped working in May 19, 2000, because he was not able to work with the pain.

On June 13, 2000, the claimant began treating with Dr. O, a chiropractor. Dr. O has diagnosed herniation at L4-5 and L5-S1, cervical neuritis with pain into the right and left shoulders, lumbar neuritis, and radiculopathy in both lower extremities. Dr. O testified at the hearing that the claimant sustained a new injury on _____, and that his problems were not a continuation of the _____ compensable injury. Dr. O noted that the claimant had been given a zero percent IR for the 1999 compensable injury and, thus, "based on reasonable medical probability" the claimant should not have lingering effects from an injury where he was given such an IR. Dr. O also testified that he based his opinion that the claimant had sustained a new injury on a comparison of the May 22, 1999, MRI which showed a "probable minimal disc bulge at L5-S1" and no evidence of disc herniation, compression of the thecal sac, or narrowing of the neural foramina at L2-3, L3-4, and L4-5, and the September 8, 2000, MRI which revealed a 3mm focal disc bulge at L4-5 causing slight compression of the thecal sac and slight narrowing of the left neuroforamina and a 4mm disc protrusion at L5-S1 with compression of the thecal sac and slight compression of both nerve roots.

Mr. T, the claimant's supervisor, testified that when the claimant returned to work on May 8, 2000, he told Mr. T that he was having back problems and was not sure he could do the job. Mr. T further testified that he put the claimant on the instrument panel line because it did not require heavy lifting and that he did not see how the claimant could have injured his back performing his duties on that line. Mr. T acknowledged that the claimant had to bend over to get the hoist; however, he maintained that the hoist did most of the work on that line.

The claimant had the burden to prove that he sustained a compensable injury. 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 same factors that it emphasized at the hearing. The significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant sustained a compensable injury is sufficiently supported by the claimant's testimony and the medical evidence from Dr. O. 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 success of the carrier's argument that the claimant did not have disability is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the hearing officer's injury determination, we likewise affirm her determination that the claimant had disability from May 13 to May 16, 2000, and from May 19, 2000, through the date of the hearing, September 20, 2000.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge