APPEAL NO. 002485

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 27, 2000. With regard to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on _____ (all dates are 2000 unless otherwise noted), but that the claimant has sustained no disability.

The appellant (carrier) appealed, challenging the claimant's "veracity," citing conflicts in the evidence, and alleging this case was "a spite claim." The carrier requests that we reverse the hearing officer's decision and render a decision in its favor on the injury issue. The claimant appealed the disability issue, citing her testimony and medical evidence that takes her off work. The claimant requests that we reverse the hearing officer's decision on the disability issue. Both parties respond to the other's appeal, urging affirmance of the issue on which they prevailed.

DECISION

Affirmed.

This case basically boils down to a question of credibility and who the hearing officer believed. The claimant was employed as a laborer with duties of cleanup, sweeping, and emptying trash. The claimant testified that on _____ she was working with her labor foreman, RR, loading heavy trash cans or barrels into the back of a pickup truck when she injured her low back. The claimant testified that she immediately told RR of her injury (denied by RR), who sent the claimant to the company "safety man." The claimant testified that after being given some over-the-counter medication and returned to work, she was eventually taken to the company doctor, Dr. P, who diagnosed a lumbar strain, prescribed medication, and returned the claimant to work but to avoid lifting (disputed). The claimant testified that subsequently, as she was in the parking lot getting ready to leave, the employer's safety coordinator gave the claimant her final paycheck and laid her off in a reduction of force (ROF). The claimant testified that she knew of at least one other employee who was laid off in the ROF. Who told the claimant she was laid off, whether the claimant knew in advance that she was being laid off, and the sequence of events between the injury and the lay off are disputed.

A form medical report and progress note from Dr. P, both dated _____, give a history of lifting trash cans, diagnose a lumbar strain, and advise the claimant to return if the problem continues. Contrary to the claimant's testimony, Dr. P's report returns the claimant to "Regular Duty." A progress note dated July 12 indicates that the claimant was a "No Show" for an appointment. The claimant testified that she was unaware that she had an appointment with Dr. P on July 12.

The claimant subsequently began treating with Dr. W, a chiropractor, who in a report dated July 19, diagnosed lumbar strain/sprain, lumbar articular dysfunction, and "Superficial and Deep Muscle Spasms." In a report dated July 20, Dr. W stated that he began treating the claimant on July 14, and that the claimant was released to light duty with certain restrictions. The claimant began a course of chiropractic treatment with Dr. W and his associates.

At a benefit review conference (BRC) held on August 31, the claimant stated that she had been unable to work since July 26; however, testimony at the CCH disclosed that the claimant had worked in at least two jobs (the claimant said at light duty), one being from August 11 through August 25 (just before the BRC).

The hearing officer, in the Discussion portion of her decision, comments:

> In view of the fact that Claimant reported to both Employer and Employer's doctor on _____ that she had sustained an on-the-job injury in the manner she alleged at the [CCH], it seems likely that Claimant did, in fact, sustain an injury within the course and scope of her employment. However, it appears that such injury was relatively minor, and has not prevented Claimant from working at her preinjury wage, and therefore has not resulted in disability as that term is defined by statute. . . . [I]t seems incongruous, to say the least, that Claimant worked two jobs during the time frame that she was representing to her treating doctor that her pain prevented any activity. It therefore appears that although Claimant has demonstrated that she sustained some injury within the course and scope of her employment on the date indicated, the evidence of disability is insufficiently reliable in this case to support a finding in Claimant's favor with respect to this issue.

The evidence is clearly in conflict. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge