

APPEAL NO. 010714

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 March 16, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable lumbar injury (but no injury to the neck, upper back, or shoulder); that the appellant (carrier) had timely contested compensability of the claim; and that the claimant had disability from October 10, 2000, to the date of the CCH. The hearing officer's decision on the timely contest of compensability issue has not been appealed and has become final pursuant to Section 410.169.

The carrier appeals the injury and disability issues, challenging the hearing officer's assessment of the credibility of the evidence and asserting that the hearing officer failed to make a "distinction between disability related to the lumbar area, versus the non-compensable neck and shoulders." The claimant responds, urging affirmance.

DECISION

Affirmed.

This case turns strictly on the credibility of the evidence. The claimant testified that he was an air conditioner (AC) installer and that on _____, he and a coworker, Mr. EA, were installing AC units. The claimant testified that while lifting an AC unit, Mr. EA's foot slipped and the AC unit shifted causing the claimant to drop the unit and fall to the ground. Mr. EA testified that the incident did not happen, that he was installing the unit by himself, and that the claimant only helped him lift the AC unit "onto a jack." The claimant testified that he complained of an injury (denied by Mr. EA), rested a few minutes, was in severe pain, left a note for the supervisor, and went to the hospital emergency room (ER).

The ER record in evidence is dated _____ with the time the claimant was seen being about three hours after the claimant left work. The ER record notes "Upper Lower Back Pain," has an impression of "Acute Sciatica," and gives a history compatible with the claimant's testimony. The claimant began treating with Dr. G, who took the claimant off work and ordered a lumbar MRI. The MRI performed on October 18, 2000, showed a broad-based posterior disc protrusion slightly abutting the traversing S-1 nerve root sleeves.

The carrier, at the CCH and on appeal, attacks the claimant's credibility regarding the mechanics of the injury, and points to inconsistencies between a recorded statement and the claimant's testimony, stressing the testimony of Mr. EA. We have frequently noted that 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).

Most of the testimony and medical evidence dealt with a low back injury and, as the hearing officer noted, that injury was "expanded" to include the neck and upper back. Disability is defined in Section 401.011(16) as the inability to obtain and retain employment at the preinjury wage because of the compensable injury. The hearing officer's decision that the claimant's disability was caused by the compensable lumbar back injury is supported by the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge