APPEAL NO. 010818

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 March 9, 2001. With regard to the three issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable low back injury on _____ (all dates are 2000 unless otherwise noted), that the claimant failed to timely notify the employer of an injury, and that the claimant did not have disability.

The claimant appealed, arguing that his testimony alone can establish injury and disability; disputing some of the hearing officer's findings; and asserting that the respondent (carrier) had the burden of establishing that the sole cause of the claimant's condition was from something other than what the claimant contended. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a pressman by the employer publishing company. The claimant testified that toward the end of his shift on _____, he felt a sharp pain in his low back and legs while manipulating an 800-pound paper roll on a dolly. The claimant said that he thought it was just a small strain and went home without reporting it. The claimant testified that the pain became progressively worse and the next day (August 3) he called his supervisor (and friend), Mr. AT, and reported his injury. What was said and whether the claimant reported a work-related injury, as opposed to saying his back hurt, is disputed.

The claimant saw his family doctor, Dr. C, on August 4. The claimant said that he was late for the appointment and Dr. C only gave him a cursory examination. The claimant denied that he was interviewed by Dr. C's nurse. A progress note dated August 4 states "c/o LBP X off & on X 2-3 mos." Dr. C prescribed medication and took the claimant off work for August 3 and 4, and returned the claimant to light duty with no heavy lifting. There was no reference in these notes of a work-related injury. The claimant testified that he gave the off-work slip to Ms. SR, the payroll clerk, who "does injury paperwork." The claimant returned to work at light duty until August 17, when, he said, his back pain was so severe that he could not continue working. Apparently, Dr. C ordered an MRI, which was performed on _____ and showed a moderate-sized herniated disc at L5-S1. Dr. C referred the claimant to Dr. D, who, in a report dated August 31, recited a history of an injury loading paper on a paper press. Dr. D took the claimant off work and prescribed medication and physical therapy.

The claimant retained an attorney on September 11 and in an Employee's Request to Change Treating Doctors (TWCC-53) of that date requested a change of treating doctors from Dr. C to Dr. H, a chiropractor. The change was approved by the Texas

Workers' Compensation Commission on September 18. The carrier asserts that the claimant's injury was not reported as a work-related injury until September 12, when the employer received a letter from the claimant's attorney. Dr. H took the claimant off work and prescribed chiropractic therapy. In evidence is a note dated October 23, signed by Dr. C's clinical coordinator, which indicates that (A) from the claimant's attorney's office called Dr. C's office asking that Dr. C's nurse indicate that she made an error in noting that the claimant had complained of low back pain off and on for two or three months. The note indicates that the matter was discussed with Dr. C and the nurse and that Dr. C "agrees that this documentation was not made in error." Other statements in evidence and testimony indicate that the claimant had initially denied his back injury was workrelated (when directly asked by Ms. SR) and that "he had hurt it a while back while he was doing some plumbing."

The evidence was conflicting and, in fact, the claimant, in closing argument, stated that "this case is really going to come down to credibility, who the hearing officer finds more credible." The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). While we agree that issues of injury and disability can be proven by the claimant's testimony alone, if found credible, the hearing officer obviously did not find that to be the case. The hearing officer's findings that the claimant's injury was due to "some unknown cause," "at some unknown time" prior to _____, is superfluous. The issues before the hearing officer were whether the claimant sustained a compensable injury on _____, whether the claimant gave timely notice of an injury to the employer, and whether the claimant had disability as defined in Section 401.011(16). The hearing officer answered all three issues in the negative and those determinations are supported by the evidence. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge