APPEAL NO. 950174

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 in (city), Texas, on January 4, 1995, (hearing officer) presiding, to determine whether the respondent (claimant) sustained a compensable injury on (date of injury), and whether he had disability resulting from such injury. Finding that claimant injured his back at work on (date of injury), when he was involved in an accident between a backhoe and the front-end loader he was driving, that he sought medical treatment a week later, and that he has been unable to work because of this accident since May 20, 1994, the hearing officer concluded that claimant was injured in the course and scope of his employment on (date of injury), and that he has disability which began on May 20, 1994, and had not ended as of the date of the hearing. The appellant (carrier) challenges these findings and conclusions for insufficiency of the evidence pointing out that claimant was terminated from his employment the day after the collision, that he did not seek medical treatment for a week after the accident and that the carrier's videotape evidence demonstrates that claimant does not have disability. Claimant's response asserts that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Affirmed.

Claimant testified that he had been a heavy equipment operator for the construction company he worked for and that on (date of injury), while operating a front-end loader at a construction site, his vehicle was struck on the right side by a backhoe vehicle and his body struck the left arm rest at approximately the level of his hip. He said damage was done to the fender of the loader, which he described as a heavy vehicle, and a copy of a photo apparently showed damage to the right fender and door. Claimant said he reported the collision to the night shift foreman immediately and went home. The next day when he reported for work, his employment was terminated. He said he was told it was because of the accident, his third, and he was given an employee separation form which stated that he was involuntarily discharged for misuse of equipment. Claimant denied having been at fault in any of the accidents. He conceded stating in a telephone interview on June 16, 1994, that he was "mad" at the employer but explained that he still regards the employer as "a good company." He further testified that approximately one week after the collision he began to have pain in his left hip, back and leg, that he began to limp, that he first sought treatment from a clinic and later from a hospital emergency room, that those facilities would not continue treatment because the employer would not provide him with an accident report, and that he had no health insurance. He said his pain and limping continued to increase in severity.

A June 8, 1994, report of (Dr. M) reflected that claimant was seen on June 6th, that he provided a history of his loader having been hit broadside and tilting sideways, and of experiencing pain in his low back and left hip radiating down his left leg. Dr. M's diagnosis

included lumbar strain/sprain, sciatic neuritis, and a hip contusion and he ordered conservative treatment including a lumbar support and a cane. A June 21, 1994, report to the carrier from (Dr. B), who apparently did not examine claimant, stated that he thought it "highly unlikely" that pain from a significant soft tissue injury would present one week later and opined that if such did occur he would "strongly suspect a secondary process of some other injury" having occurred. Claimant said he eventually came under the care of (Dr. H). Dr. H reported on November 30, 1994, that diagnostic studies revealed claimant to have disc bulging at the L3-4 and L4-5 levels and disc protrusion at L5-S1, the latter which he described as a "rather massive pathology at L5-S1." Dr. H regards claimant as "more likely than not a surgical candidate" when the pain can no longer be tolerated. Claimant said he intends to have the surgery recommended by Dr. H.

Claimant further testified that he has not worked since the accident because he cannot perform his duties as a heavy equipment operator nor can he perform any work because of the pain. He said he does nothing at home either and that he has not attempted to find work. Dr. M's June 8th report stated that it was "undetermined" as to when claimant could return to either limited or full-time work. Claimant said he is able to drive a car for short periods of time and that he can walk for short periods of time without the aid of his cane and crutches but that he uses them at various times each day depending upon the severity of the pain. The carrier's investigative report of September 13, 1994, stated that claimant was observed walking into a store without the aid of crutches but walking into a "welfare office" using crutches and leaving them in the car when he returned home. The report of November 10, 1994, stated that claimant was seen walking up a flight of stairs and also driving to a store and walking in and out of a store. The videotape showed him walking from a store to his car without a cane or crutches, getting into his car without apparent difficulty, and a limp was not obvious. Dr. H reported on December 28, 1994, that "disc disruption is extensive and quite painful. . . . [Claimant] is disabled and cannot walk for more than about a block at a time and even so, with a severe list." Dr. H also stated that performance of claimant's work with heavy equipment would be "absolutely impossible" given the condition of his back.

The disputed issues presented the hearing officer with questions of fact for his resolution as the finder of fact. The hearing officer is the sole judge of the materiality and relevance of the evidence and of the weight and credibility to be given the evidence. Section 4110.165(a). It is for the hearing officer to resolve the conflicts and inconsistencies in the evidence, Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), including the medical evidence, Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not disturb the challenged findings unless we find them so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 632, 244 S.W.2d 660 (1951). We are satisfied that claimant's testimony, as corroborated by Dr. M's and Dr. H's reports, sufficiently supports the challenged findings and conclusions. Finally, the carrier also

complains of defects in the hearing officer's statement of the evidence. The Appeals Panel has observed that while the 1989 Act requires findings of fact and conclusions of law it does not require a statement of the evidence. *See e.g.* Texas Workers' Compensation Commission Appeal No. 93955, decided December 8, 1993. That decision went on to state that when a hearing officer chooses to provide additional information in a decision, the hearing officer is not required to mention all the evidence but should "generally provide a reasonably fair summary of the material." We do not find reversible error in the statement of the evidence in this case.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge