APPEAL NO. 950176

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 4, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues were whether appellant, (claimant), who is the claimant herein, sustained a compensable injury on (date of injury), and whether he had, as a result of such injury, the inability to obtain and retain employment equivalent to his preinjury wage (disability).

The hearing officer determined that claimant had not proven that he sustained a compensable injury, and that he did not have disability due to his alleged injury. The Appeals Panel reversed and remanded the case, and a second hearing was held on June 3, 1994. At the end of the hearing a recess was announced to enable the claimant, who was not present on June 3rd, to appear. This did not occur because both parties, in July 1994 letters to the hearing officer, agreed to forego such a hearing. The record was closed and a new decision entered in which the hearing officer held, again, that the claimant had not proven either a compensable injury on the date in question or disability therefrom.

The claimant appeals, arguing that the hearing officer erred by not issuing a subpoena for the personnel records of a supervisor for the employer, and further that the evidence proves that he sustained an injury on the job and had disability therefrom. The carrier responds that there is sufficient evidence to support the hearing officer's decision, and that no error occurred through denial of the subpoena because the requested records were not relevant to the case at hand.

DECISION

We affirm the hearing officer's decision and order.

The facts set forth in Texas Workers' Compensation Commission Appeal No. 94278, decided April 12, 1994, were not changed at the remand hearing or amplified, and are incorporated in this decision by reference. To briefly summarize, the claimant stated he injured his back on (date of injury), as he lifted boxes. The majority of the Appeals Panel had remanded the decision out of concern that the hearing officer may have applied a standard wherein claimant had to prove a specific incident, through medical evidence, that caused his injury.

To respond to this, the hearing officer during the remand hearing explained that he well knew that the claimant's testimony alone, if believed and without corroborating medical evidence, could satisfy the burden of proof, and that the burden of a specific time, date, and place would be met by probative evidence that the activity in which claimant was engaged led to injury. The hearing officer stated on the record that his concern leading to the previous decision had been the lack of probative evidence to establish the causal connection between work and claimant's injury.

At the remand hearing, the hearing officer heard arguments concerning the request of the claimant to subpoena the personnel records of a supervisor of the employer, (Mr. A), who had apparently been discharged by the employer. The claimant's attorney asserted that the records were relevant because if Mr. A had a reputation for denying injuries, this would bear on claimant's case. The carrier responded that even assuming Mr. A did have such a practice, it was not relevant to whether claimant had been injured on the job and whether he had disability. The hearing officer determined that such information was not relevant and denied the subpoena.

After considering the record, including the hearing officer's assertion of his appreciation of applicable law, we affirm his decision. We believe that the concern of the majority has been addressed. As the case is not reversible due to a matter of law, the decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Co. of Pittsburgh, Pa. v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied). The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Likewise, we agree that the trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). On both the issue regarding occurrence of an injury, and the presence of resulting disability, we hold that there is sufficient evidence to support the hearing officer's decision.

We do not find error in the hearing officer's decision to deny issuance of a subpoena for Mr. A's personnel records. There was no issue of whether claimant gave timely notice to the employer that might be affected by Mr. A's contended bias. On the issues of whether he was injured, or whether he had disability, the relevance of any animus a supervisor may have borne toward injured workers would appear to have no bearing on the issues at hand, which it was the burden of claimant to affirmatively prove.

For these reasons, the decision and order of the hearing officer are affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Lynda H. Nesenholtz
Appeals Judge