APPEAL NO. 950225

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 12, 1995. The hearing officer, (hearing officer), determined with respect to the issues before him: that the appellant (carrier) filed its first notice of disputed claim the same day it received notice of the injury and thus did not waive the right to dispute this claim; the respondent (claimant) was injured in the course and scope of his employment on (date of injury); the claimant reported the injury to his employer within 30 days; and the claimant has disability beginning June 17, 1994, and such disability has not ended as of the hearing. The carrier appeals the latter three determinations, contending that they are not sufficiently supported by the evidence. The claimant replies that the hearing officer's decision is correct.

DECISION

We affirm.

The claimant, who had been employed as a truck driver for (employer), was involved in a head-on collision with another vehicle on (date of injury) (all dates hereafter are in 1994). He said he was wearing his seat belt, but that his lower body slid over to the passenger's side upon impact; his vehicle suffered only minor damage but the other vehicle was totaled. The claimant said he did not experience immediate pain, although he was shaken up by the accident. His supervisor, (Mr. P), and (Mr. B), employer's district manager, came to the accident scene, and Mr. P drove claimant to a hospital for a drug test, which was negative. Claimant said he spoke to the police officer at the scene, who told him he would not be getting a ticket. However, claimant, who had been put on unpaid suspension pending investigation of the accident, was called by Mr. P on June 24th and told that he would be receiving a ticket and that accordingly he was being terminated. The claimant said he later received a ticket through the mail.

The claimant testified that he continued to be without any symptoms until June 28th, when he began experiencing pain in his legs and hips. He said that on July 1st he telephoned Mr. P and told him he needed to see a doctor because he was having pain from the accident; he said Mr. P said he would have to speak with Mr. B but that Mr. P never called him back. Claimant went to his family doctor, (Dr. K), on July 8th. He said that Dr. K's office telephoned Mr. B but was told the claim would not be paid.

Mr. P remembered a different series of events regarding his conversations with claimant. He stated that when he telephoned claimant on June 24th to say he was terminated, he heard claimant's wife in the background, advising her husband to mention that his back was hurting. At that point, he said, claimant told him his back hurt and that he wanted to see a doctor. Mr. P said claimant did not state that the accident was the cause of his pain, although Mr. P surmised that that was the case. The claimant denied that his wife had spoken up during his conversation with Mr. P or that he had even had any pain on

June 24th, and maintained he first told Mr. P about his pain on July 1st. Mr. P stated that he had two conversations with the claimant, and that the second one could have been on July 1st, but that he did not remember claimant mentioning back pain during the second.

The medical evidence shows that on July 8th, Dr. K diagnosed low back pain from the motor vehicle accident; Dr. K advised "rest at home" and prescribed medication. Claimant next saw the doctor on July 13th and August 23rd, at which time Dr. K wrote that claimant's condition was unchanged and that "He still has a lot of pain." The claimant did not see Dr. K again until November 15th; he said the delay was caused by his inability to pay the doctor and said this appointment was made following an interlocutory order at a benefit review conference. At the time of the hearing the claimant had had some physical therapy and had undergone an MRI although reports of neither were in the record. He was also continuing to see Dr. K whom he said had not released him to work; neither had claimant sought any employment. He said that he continued to have pain and was unable to drive or perform heavy work. He had applied for unemployment benefits prior to the time he said he first experienced pain, but these had been denied on July 11th.

Whether the claimant suffered an injury due to the incident on (date of injury) was clearly a question of fact for the hearing officer to determine based upon the evidence before him. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer was entitled to find more credible the claimant's versions of events, by which he did not experience prompt onset of pain from the accident; we cannot agree with the carrier that expert medical testimony is required in this case as it does not present the situation where a fact finder would lack the ability, from common knowledge, to find a causal connection between the work-related incident and the ultimate injury. Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). We find the evidence in this case to be sufficient to support the hearing officer's determination that claimant suffered a compensable injury on (date of injury). We likewise find sufficient the evidence to support his determination that claimant timely notified his employer of the injury, as the claimant testified that he told Mr. P about his injury and that Dr. K's office contacted Mr. B. We disagree with the carrier that the claimant did not provide the requisite degree of specificity about his injury; both Mr. P and Mr. B knew about claimant's accident and Mr. P testified to his understanding that claimant was contending his injury arose from that accident.

We find the evidence supporting the remaining issue, disability, to be less probative but we nevertheless cannot say it is so lacking as to require our reversal. As we have many times stated, as a general rule issues of injury and disability may be established by the testimony of a claimant alone. *See* Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. While medical evidence to support disability was slim

in this case, we also note claimant's testimony that his ability to get medical treatment was hampered by his inability to pay.

Based upon the foregoing, we find that the hearing officer's decision was not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer's decision and order are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge