APPEAL NO. 950257

This appeal arises under 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 13, 1995, (hearing officer) presiding. The appellant (claimant) takes this appeal of the hearing officer's determination that the claimant did not sustain a compensable injury on (date of injury), and that the claimant did not have disability. The respondent (carrier) contends that the hearing officer's decision was correct.

DECISION

Affirmed.

The claimant had been hired as an unloader by (employer) in month of (year) (all dates herein are in 1994). On (date of injury), his fifth day on the job, he was unloading boxes from a trailer onto a belt when some stacked boxes fell and he moved forward and caught one in his arms. He said he estimated the box weighed fifty pounds or more and that this caused him to feel a strain or pull in his back. Some other boxes struck him on the back, but he said that did not cause him to feel pain. He kept working and finished his shift about 20 minutes later. That evening he took medication but the following day his back was stiff and sore and he could barely get out of bed. That day, January 19th, he said he called his supervisor, (Mr. B), and told him he had hurt his back and that the pain felt like a kidney infection. Mr. B testified, however, that claimant told him he thought he had a kidney infection and that he did not mention an injury. Claimant's trainer, (Ms. I), testified to the same facts. Claimant said he spoke to Ms. I the same day but that she only asked how he was feeling and they did not discuss the nature of his problem.

On January 20th the claimant saw (Dr. F) at the occupational clinic used by the employer. Mr. B's testimony was that on January 19th he only told claimant to get medical attention, and that he did not direct claimant to go to the employer's doctor. He also stated that on January 20th the claimant told him for the first time that he had been injured on (date of injury); he instructed claimant to speak with (Mr. D), another supervisor, and to fill out an accident report. According to Mr. D's written statement, "[Claimant] came to me and I asked him how this injury occurred and he said he caught a package that was falling. I asked why he didn't report it and he said it didn't hurt. I said I understand you have had some kidney problems and he said `I've never had anything wrong with my back.'"

The Initial Medical Report (Form TWCC-61) filed by Dr. F reports that a "wall of boxes came down" on claimant, and he prescribed medication and physical therapy. Claimant said Dr. F referred him to (Dr. C) who gave his impression as lumbar strain with evidence of a lumbosacral radiculopathy; he recommended strengthening exercises. He was also seen by (Dr. S), who on February 7th took the claimant off work "until further notice." The claimant testified that he was not released to return to work until the end of July, and that he secured other employment on August 4th.

This case is one which clearly turns on the credibility of the witnesses, which is a matter solely within the hearing officer's purview. *See* Section 410.165(a). As the hearing officer stated in his discussion, greater weight and credibility was accorded to carrier's witnesses, whose testimony cast doubt upon the veracity of claimant's version of events. As finder of fact, the hearing officer resolves conflicts and inconsistencies in the testimony and evidence, Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ), and is entitled to believe one witness and disbelieve others. Ford v. Panhandle & Santa Fe Ry. Co., 252 S.W.2d 561 (Tex. 1952). An appellate body will not overturn the decision of the fact finder unless it is 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). Upon our review of the evidence, we decline to make that determination in this case, as we find the hearing officer's decision on the issue of compensability to be adequately supported by the evidence of record. We also find no error regarding the determination of disability, as the 1989 Act requires that the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The decision and order of the hearing officer are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge