

APPEAL NO. 950262

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 24, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not sustain a compensable injury on (date of injury), and has no disability. Claimant asserts that the statement of a co-worker corroborates his position and disagrees with the conclusion that he had no compensable injury, questioning the credibility of his employer; he added that he has been unable to work. Respondent (carrier) replies that the decision of the hearing officer should be upheld.

DECISION

We affirm.

Claimant had worked for (employer) for approximately seven months, when he states he hurt his back when he slipped and fell stepping down from a backhoe. A short time later on that same day, claimant was terminated, along with (Mr. H) evidently for not bringing a truck belonging to employer to the job site. Claimant stated that he did not tell employer of his injury at the time he was fired, but chose to wait until noon of the same day when he saw the employer again as he obtained his check. Later that day claimant testified that he went to a hospital ER for treatment of his back. The ER diagnosed a strained back. The ER record also noted that claimant reported falling that morning, but it did not comment in regard to whether the fall was at work. The only other medical records in evidence are two statements from (Dr. Z); one is dated in May 1994, and only says that claimant is unable to work; another is dated in September 1994 - this letter does relate that claimant fell at work in (month year) and has lumbosacral radiculopathy.

Claimant also provided a statement of Mr. H, signed, which says that Mr. H was present when claimant told employer on (date of injury), that he had fallen and hurt his back. Mr. H did not date his statement.

The only issues at the hearing involved whether there was injury in the course and scope of employment and disability; there was no issue as to timely notice. The hearing officer decided these issues against claimant, citing in his Statement of Evidence, which is not attacked on appeal, that he questions the credibility of the claimant, adding that there was no objective evidence of a relationship between the work and the claimed injury. The hearing officer then comments on the degree of claimant's credibility by saying that his testimony was less credible than the "written records" of the employer. We conclude from this statement that the claimant had virtually no credibility because the written documents of employer are entitled to no weight or at most the slightest possible weight.

Credibility of the claimant is cited as the basis for the hearing officer's ruling and that provides a sufficient basis for affirming the decision of the hearing officer. The claimant, not the carrier, has the burden of proof in this case. Because of the way credibility of the

claimant is compared to that of the employer's "written records," the writer of this opinion believes that some observation of those documents is in order. Neither exhibit is a record kept at the time of the event, such as a work diary, and neither was signed, with neither even identifying the name of a person who made the assertion. These documents do not contradict what claimant asserted about his fall; while at least one may be considered as asserting a position in regard to disputing a claim, neither is sufficient to use as an assertion of the truth in regard to that position. See Texas Workers' Compensation Commission Appeal No 94106, decided March 7, 1994, which stated that unsigned material presented for the truth of matters contained therein without a showing of authenticity should not have been admitted over objection.

The two records included a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21), which names a carrier representative, while providing no signature; it does not dispute injury in course and scope in citing no medical documentation, but does dispute that notice was timely given. See Texas Workers' Compensation Commission Appeal No 92468, decided October 9, 1992, which reversed and rendered a decision that allowed claimant's injury to be disputed as to course and scope on the basis of a carrier's statement of "no medical to support on the job injury." The other document is entitled "Employer's Contest of Compensability" but has no form number. It is dated December 6, 1993, approximately six weeks after the claimed injury and contains a signature block for the employer to sign; there is no signature or even a name typed in this area. (*Compare* to Mr. H's statement which was signed but not dated.) This form does not dispute injury in the course and scope of employment either; it has the following typed entry:

The above said employee was employed by (employer) June 23, 1993 through October 22, 1993. He was let go for insubordination as of the (date of injury). He came by to pick up his final check on the (date) day of (month). I was unaware of the said injury to the former employee.

While the TWCC-21 disputed the timeliness of notice, the above quoted statement disputes nothing, although it may appear to infer that claimant did not work on (date of injury) and may imply that a claimant who was terminated for insubordination should not have a compensable claim. As stated, it was not signed and no work diary, signed statement, or testimony indicates that claimant did not work on (date of injury). Claimant testified that he worked on (date of injury) until terminated.

In addition to there being no issue as to timeliness of notice, there also was no issue as to whether carrier disputed injury in the course and scope of employment within 60 days of receiving written notice of injury. See Section 409.021.

Finding that the decision and order set forth at the end of the opinion of the hearing officer are not so against the great weight and preponderance of the evidence so as to be manifestly unjust, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge