APPEAL NO. 950337

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 26, 1995, to determine whether the appellant (claimant) reported an injury to his employer on or before the 30th day after the injury or, if not, whether good cause existed for his failure to report the injury timely; whether the claimant sustained a compensable injury in the course and scope of his employment on (date of injury); and whether the claimant had disability resulting from a compensable injury and, if so, for what period or periods. The hearing officer, (hearing officer), determined these issues in the respondent's (carrier) favor. The claimant appeals, pointing to evidence which he says supports his position.

DECISION

We affirm.

The claimant, who testified through an interpreter, had been employed by (employer); part of his job duties involved sawing concrete blocks. It was his contention that he suffered a back injury on (date of injury), due to the sawing (all dates are in 1994). The claimant said he began suffering back pain and that he ultimately went to (state) for medical treatment in (month). He said he told his supervisor, (Mr. JM), that his back hurt and he needed to take time off work to see a doctor, but agreed that he did not tell Mr. JM that he had hurt his back at work. The medical evidence reflects that the claimant saw (Dr. V) on August 27th, demonstrating pain "after flexo-extension movements of the lumbar column," that his was at first treated conservatively, that a radiological examination on (date) showed a herniation at L4-5, and that as of December 8th Dr. V stated the claimant was a candidate for surgery.

The claimant contended that he was unaware of workers' compensation insurance requirements and was later advised by friends to file a claim. He believed he notified Mr. JM of a work-related injury two days before he was sent by his employer to (Dr. L) who examined the claimant and released him to light duty work on October 6th. A lumbar spine MRI performed on October 7th showed that the L2-3 and L3-4 levels were normal, with no sign of disk bulging or neural sac impingement and that at the L4-5, "the combination of moderate posterior disk and osteophyte bulging, moderate facet arthropathy and relatively short pedicles create a triangular shaped spinal canal with narrow recesses, constricting the neural sac and rendering it relatively triangular in shape." Facet arthropathy and a milder degree of generalized disk bulging were seen at L5-S1 but the neural sac was normal.

The testimony of Mr. JM, who also testified through an interpreter, was conflicting as to when the claimant told him the injury was work related; he stated variously that this occurred in (month), (month), and (month). He remembered telling his supervisor, (Mr. GM), that claimant had suffered a work-related injury on (date); Mr. GM also testified as to this fact. Both men stated that the employer held safety meetings, translated into Spanish, which informed employees that they were to promptly report injuries.

The claimant appeals the hearing officer's findings and conclusions stating that the claimant did not suffer an injury in the course and scope of his employment, that he did not have good cause for failing to timely report such injury, and that he did not have disability. The claimant contends that he is fluent in Spanish only and that he was unaware of workers' compensation insurance and believed he was responsible for his own medical treatment.

The 1989 Act provides that the hearing officer is the sole fact finder and the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). As such, he may believe all, part, or none of any testimony; judge credibility; assign weight; and resolve conflicts and inconsistencies in the evidence. Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Further, the claimant's testimony only raises an issue of fact to be resolved by the hearing officer, who is not required to accept it. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). An appellate 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, National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); this is true even where the record contains evidence which would have supported different inferences. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We cannot say, upon review of the evidence, that the decision of the hearing officer in this case as to the issues of compensability, notice, and disability was so against the great weight and preponderance of the evidence as to be manifestly unjust or unfair. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). As to claimant's contention that he was unaware of the details about workers' compensation coverage, Texas courts have held that misunderstanding or lack of knowledge of the law is not good cause for failure to timely notify an employer of an injury. Allstate Insurance Co. v. King, 444 S.W.2d 602 (Tex. 1969).

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

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge