APPEAL NO. 950353

This appeal is considered pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a benefit contested case hearing held in (city), Texas, on February 2, 1995, the hearing officer, (hearing officer), determined that the claimant sustained a compensable injury on (date of injury), and that he had disability from May 10, 1994, to the present resulting from such injury. The carrier appeals these determinations, pointing to inconsistencies in the evidence and in claimant's testimony. The claimant responds that the hearing officer's decision is correct.

DECISION

We affirm.

The claimant was employed by (employer). It was his testimony, assisted by an interpreter, that he experienced a cramp and pain in his neck and shoulder on Thursday, (date of injury) (all dates are 1994) when he picked up a roll of material, threw it on his shoulder, and it fell into his neck. He said he continued to work the rest of that day and came into work the following day, but that he had to leave because of the pain. He said he spoke with his supervisor, (Mr. P), to say he had pain and could not work, but that he did not tell Mr. P how he had injured himself. The following Monday, May 9th, he said he worked half a day and then went to see (Dr. G). He said he told Dr. G that he had hurt himself on a roll of material, but did not specify that it had happened at work. He said Dr. G gave him a light duty release, which he brought to work and gave to (Ms. S), who worked at employer's nurse's station. Claimant said Ms. S told him that employer had no light duty jobs.

Claimant admitted that he had had a problem with absenteeism at work and that he did not mention a work-related injury to his employer or to Dr. G because he did not want to be fired. He also paid Dr. G's bill himself. He said that on May 11th, after finding out that the employer could not give him light duty work he said he returned to Dr. G and said he could no longer pay for treatment. On that date he said he told Dr. G that his injury was work related and Dr. G responded that he would "fix this with workers' compensation." The claimant acknowledged that he nevertheless did not inform his employer that his injury was work related until May 19th; he said that until that date he had relied upon his impression that Dr. G was going to help him.

(Mr. H), employer's facility manager and Mr. R's supervisor, testified that the claimant had had attendance problems and had been given written and oral warnings which culminated in a week's suspension beginning April 25th; claimant also acknowledged that this was the case. Mr. H said claimant told him at that time that he needed to be off work anyway because of medication he was taking for a condition which both claimant and Mr. H referred to as an embolism. Claimant denied that he had had neck problems prior to (date of injury). He said he had experienced some neck pain earlier from carrying bags of ice on his shoulder but that it had abated; records of a (Dr. R) reflect that claimant was seen on

April 25th complaining of "pain on neck/onset x 1 week." Mr. H also stated that May 18th was the date he learned that claimant was claiming a work-related injury. He testified that claimant was off work on (date), that he did not bring in a doctor's note that day, but based upon his records he believed claimant's absence had been excused by a supervisor. His records also showed that claimant was out on May 9th due to a chiropractor appointment.

In evidence were Dr. G's records showing treatment for neck pain beginning May 9th; in addition, Dr. G prepared an affidavit stating that claimant advised him that his injury occurred at work, that claimant paid for several visits himself, that Dr. G advised him that "we would look into workers' compensation insurance," that he advised him to report the injury to his employer, and that when the employer would not guarantee payment claimant stopped treatment. The claimant testified that he has not returned to work.

In its appeal the carrier contends that there was no credible evidence supporting the hearing officer's decision that the claimant was injured in the course and scope of his employment and that he had disability. In support, the carrier cites to evidence which it maintains points to an inherently incredible series of events. However, the 1989 Act provides that 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); when presented with conflicting testimony and evidence, the hearing officer may believe one witness and disbelieve others, and may reconcile inconsistencies in the testimony of any witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). In this case the hearing officer was obviously persuaded by claimant's rendition of events, which in many respects was corroborated by other evidence. As to the credibility of claimant's testimony, the hearing officer could choose to believe that the claimant did not immediately report his injury as work related because of his fears related to his problems with (and recent suspension for) absenteeism, regardless of whether that belief was rational. In addition, he could find credible the claimant's statement that he told Dr. G that the injury was caused by work after finding out that no light duty jobs existed, and that he waited to report the injury to his employer on the strength of his understanding that Dr. G would assist him with workers' compensation. To the extent the carrier suggests that Dr. G himself raised the issue of workers' compensation, claimant's testimony and Dr. G's affidavit stated otherwise. While the evidence supporting disability was less well developed, we find the evidence sufficient, in the form of claimant's testimony and the medical records, to affirm the hearing officer's determination. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992.

Upon review of the record, we find the hearing officer's decision to be not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer's decision and order are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge