

APPEAL NO. 950453

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 7, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) was injured in the course and scope of employment on (date of injury), and gave timely notice to his employer of his injury. No period of disability was found. Claimant asserts that he has disability. Respondent (carrier) did not appeal the decision that claimant was injured and gave timely notice, nor did it respond to claimant's appeal as to disability.

DECISION

We affirm.

Claimant worked for (employer) when he states he hurt his back lifting pipe on (date of injury). Claimant testified that he told his superintendent, (Mr. D), that he hurt his back lifting pipe. Mr. D testified that claimant only told him that he was sore. There is no issue on appeal as to either injury or notice.

At the conclusion of claimant's direct examination, the hearing officer inquired whether there would be any evidence developed as to disability. Claimant's counsel replied, "[w]ell, we concede that we continued to work injured until August 24th." On cross-examination, claimant agreed that he had lost no work with employer from the (date of injury) accident when he left their employment at the end of (month year) and went immediately to work for (subsequent employer).

Claimant stated he worked for subsequent employer until "around the 27th." Claimant did not say what month, but described, apparently, another injury lifting pipe (he said he had a difficult time lifting a piece of pipe and "couldn't lift anything heavy after that"); he added that he went to an emergency room "when I got back from that job site." The record contains an emergency room report indicating a visit on August 29, 1994. In answer to a question from the hearing officer, claimant said that he stopped working "after August 24th." Later, claimant answered the hearing officer's question in regard to work by saying that he had trouble working in construction anymore. He agreed that he could do welding if not at a construction site.

The hearing officer recites in his opinion that claimant sought to add an issue of whether another injury occurred on August 24, 1994. The record also reveals this request and the hearing officer's response denying it, citing the applicable rule governing such requests.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Medical records in evidence relate examinations after the second incident only, but all refer to a (date of injury), accident date. The emergency room record indicates claimant's history as including a back injury in (month) and said, "pain increased slowly until last week. Pain ↑." (Emphasis added). Claimant, however, acknowledged

that he missed no work until after the incident with subsequent employer and provided no evidence that he could not work because of the (date of injury), injury, except to state that he could no longer work in construction. The hearing officer could conclude from the evidence that claimant did work in construction after the (date of injury), accident, and only after the August incident was he unable to do so.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge