

## APPEAL NO. 94282

On January 29, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the hearing were: (1) whether the respondent (claimant) sustained a compensable injury on or about (date of injury); and (2) whether the claimant had disability from August 9, 1993, to September 13, 1993. The hearing officer found in the claimant's favor on both issues and ordered the appellant (carrier) to pay workers' compensation benefits in accordance with his decision and the provisions of the 1989 Act. The carrier disagrees with the hearing officer's decision and requests that we reverse it and render a decision in its favor. The claimant did not file a response.

### DECISION

Affirmed.

On (date of injury), the claimant was working as a dockhand for the employer, (employer). The claimant testified that on that day he sustained a back sprain at work when he lifted boxes weighing up to 100 pounds. On August 9, 1993, the claimant's treating doctor diagnosed a thoracic sprain resulting in muscle spasms complicated by thoracic spondylosis, and recommended that the claimant stay off work for three days. The claimant's treating doctor stated that "[i]t is my opinion that the lifting while working for [employer] was directly correlated to [claimant's] complaints." A doctor the claimant saw at the request of the employer also diagnosed a thoracic sprain and did not release the claimant to return to work until September 13, 1993. The medical reports indicated that the claimant initially told his health care providers that he didn't know how he was injured. The claimant gave conflicting accounts as to when he started to feel back pain after lifting at work on (date of injury). A coworker testified that the claimant had told him that he, the claimant, injured his back while moving items at home prior to beginning to work for the employer on July 15, 1993. The claimant denied having any prior back injury. The claimant's supervisor testified that the claimant never reported a work-related injury to him and that the claimant had told him that the back pain was from a prior injury. Timely notice of injury was not an issue at the hearing.

The claimant had the burden to prove that he was injured in the course and scope of his employment and that he had disability. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer is responsible for determining what facts have been established from the conflicting evidence. Having reviewed the record, we conclude that the hearing officer's findings, conclusions, and decision that the claimant sustained a compensable injury on (date of injury), and that the claimant had disability from August 9 to September 13, 1993, are supported by sufficient evidence and are not against the great weight and preponderance of the evidence. See Texas Workers' Compensation Commission Appeal No. 91062, decided December 9, 1991.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge