

APPEAL NO. 980064

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 20, 1997. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals these determinations, expressing his disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a courier. He testified (and dispatch logs showed) that he left a pick-up point in a company-owned automobile at approximately noon on _____, to return to the main office. He estimated that this trip takes about 10 minutes "door to door." He further testified that at an intersection near the main office he was involved in a motor vehicle accident that caused head and back injuries. According to the claimant, he exchanged information with the other driver, but the police were not called, nor did he call his supervisor on his mobile phone. He said he then proceeded to park the car in the usual spot in the back of the building, went into the main office where he dropped off the keys, told a (Ms. D) about the accident and spent about five minutes looking for a supervisor to report the accident. Finding none, he said, he clocked out for lunch. Time card records reflect that this occurred at 12:11. A (Ms. L) was waiting in the front of the building to drive him to lunch. The two drove in her car approximately 100 yards to a restaurant. Ms. D in a written statement said she did not recall the claimant telling her he had an accident before he went to lunch.

In an earlier version of this story, the claimant admitted that he said he walked to the restaurant and never mentioned Ms. L because he did not want his wife to think he was having an affair with Ms. L. In a first statement on July 30, 1997, Ms. L wrote that she observed the two vehicles involved in the collision and waited to take the claimant to lunch. She said the claimant did not feel like eating, but felt sick, so she took him back to work to report the accident. In a second statement of August 5, 1997, Ms. L said she and the claimant went from the restaurant to his sister's house and then returned to work. The claimant confirmed the second version. His time card reflects that he clocked in from lunch at 1:22 p.m.

Upon his return from lunch, the claimant reported the accident to (Ms. C) and filled out paperwork in which he wrote down 1:00 p.m. as the time of the accident. The claimant said he did not record this time "intentionally," but does not know why he did so and was

still "shaken up." He insisted that the accident occurred before he clocked out for lunch "no matter what" his time card shows.

Ms. C testified that she first found out about the accident when the claimant reported it to her between 1:30 and 2:00 p.m. on _____. She said that the claimant never volunteered the information to her that it occurred on his return from the pick-up point, and she only found out the next week while reviewing the time cards that at 1:00 p.m. the claimant was still clocked out for lunch. She also said that claimant's sister, who also worked for the employer, clocked in about four minutes after the claimant did and she never mentioned the accident. Because the accident involved a company vehicle, Ms. C speculated that the claimant was driving the car without authority to go to lunch when the accident occurred. The other party to the accident signed a statement acknowledging that the accident occurred between 12:10 and 12:20.

The claimant had the burden of proving that he sustained a compensable injury in the course and scope of employment as alleged. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided June 21, 1997. It was not disputed that the claimant was involved in a motor vehicle accident while driving the employer's car on _____. The dispute centers on when the accident occurred and what the claimant was using the car for. The claimant admitted that Ms. L gave inconsistent versions of what occurred at lunch time and he himself only belatedly identified her. The carrier contends that it was impossible for the claimant to have driven from the pick-up point at noon, had the accident, parked the car, searched for a supervisor, and clocked out for lunch at 12:11. It also points to various versions of events furnished by the claimant and Ms. L as evidence that the claimant lacked credibility. The hearing officer, as fact finder, was the sole judge of the weight and credibility of the evidence. Section 410.165(a). He evaluated the evidence and concluded that the claimant was not involved in a motor vehicle accident on his way back from the pick-up point, but while using the company vehicle without permission or authority and purely for the personal reason of going to lunch. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 709 S.W.2d 175, 176 (Tex. 1986). Having reviewed the record in this case, we find the information deemed credible and persuasive by the hearing officer sufficient to support his determination that the claimant did not sustain a compensable injury and decline to reverse that determination.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge