

APPEAL NO. 980107

On December 16, 1997, a contested case hearing (CCH) was held with the hearing officer. The CCH 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 CCH were: (1) whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; and (2) whether the claimant has had disability. The claimant requests review and reversal of the hearing officer's decision that: (1) he did not sustain a compensable injury on \_\_\_\_\_; and (2) he has not had disability. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence and requests affirmance. Written statements attached to the claimant's request for appeal which were not presented at the CCH will not be considered on appeal. Section 410.202(a). These statements have not been shown to be newly discovered evidence.

DECISION

Affirmed.

The claimant began working for the employer, a personnel service, in March 1997 (all dates are in 1997 unless otherwise noted) and he was assigned to work in the shipping and receiving department of a client company. The claimant said that in April he went to a hospital complaining about leg problems. A hospital record dated April 23rd reflects that the claimant was seen at the hospital on that date with complaints of pain in his low back, left hip, and left leg; that he had had that pain for three weeks; and that he was diagnosed as having musculoskeletal pain.

The claimant said that he had been ordered to pay child support and that he was in arrears in those payments. The claimant testified that about a week before \_\_\_\_\_ he asked one of the owners of the employer, (LT), if the employer had started taking child support payments out of his pay and that LT said he did not know. LT testified that on \_\_\_\_\_ at about 10:30 a.m. the claimant called and told him that the employer was taking child support payments from his pay and that the employer would regret it if it continued to do so. LT said that he told the claimant that he did not know if child support was being taken out of the claimant's pay and that he would contact the employer's headquarters. LT said that the claimant was very upset. The claimant denied having that conversation with LT on \_\_\_\_\_. According to payroll records, the first time that the employer took child support payments from the claimant's pay was for the pay period ending May 18th and LT said that the claimant would have received the paycheck for that pay period on or about May 23rd. The claimant said that he did not receive that paycheck until after his injury of \_\_\_\_\_.

The claimant said that on \_\_\_\_\_ he was working at the client company when he lifted a 104-pound box from the floor at about 3:00 p.m. and felt pain in his middle back. He

said that he continued to work the rest of his shift, which ended at 4:00 p.m., but that he told (SK), whom he identified as his supervisor at the client company, that he had hurt his back lifting a box at work. SK wrote that he does not recall having any conversation with the claimant about any injury. (PB), whom LT identified as the claimant's supervisor at the client company, wrote that no one at the client company, including himself, had been informed that the claimant had a work-related injury and that about a month before May 29th (the date of PB's written statement), the claimant had told him that he was suffering from a previous back injury. The claimant denied telling PB that he had a previous back injury.

The claimant said that he had severe back pain the evening of \_\_\_\_\_, that his mother drove him to a hospital at about 11:30 p.m. that evening, and that he had to wait at the hospital before being treated early the next day. Hospital records reflect that the claimant was seen at about 2:00 a.m. on \_\_\_\_\_ with complaints of severe back pain radiating down his left leg; that he told (Dr. D), who treated him at the hospital on \_\_\_\_\_, that his pain had gradually gotten worse after lifting a 100-pound box at work on \_\_\_\_\_; that x-rays of the claimant's lumbar spine done on \_\_\_\_\_ were read by (Dr. P) to be negative; that Dr. D diagnosed the claimant as having back pain with left leg radiculopathy; and that Dr. D recommended bed rest. The claimant's mother wrote that the claimant had severe pain the evening of \_\_\_\_\_, that he told her that he had sharp pain when he picked up a box at work that day, that she drove him to the hospital that evening, that Dr. D told them that the claimant had a ruptured disc, and that she called "Jill" at the employer on \_\_\_\_\_ and told her that the claimant would not be at work because he had a ruptured disc from lifting boxes at work.

(JT), the other owner of the employer, testified that the morning of \_\_\_\_\_ the claimant's mother called her and told her that the claimant had been to the hospital the night before, that the claimant would not be coming to work, and that the claimant's condition was not work related. LT testified that on May 27th the claimant came to the office and told him that he had hurt his back while moving boxes at work on \_\_\_\_\_. He said that at that time the claimant asked him if child support would be taken out of his workers' compensation payments.

The employer took the claimant to (Dr. DK) on May 30th and Dr. DK diagnosed a lumbosacral strain and wrote that the claimant could return to regular duty with restrictions. Hospital records reflect that on May 31st the claimant was seen at the hospital he was seen at on \_\_\_\_\_, that on May 31st he had complaints of pain from his neck to his lower back and down his right leg, that he again reported that he had been injured at work on \_\_\_\_\_, and that he was diagnosed as having chronic back pain with muscle strain. Records from another hospital reflect that the claimant went to that hospital on June 9th complaining of back pain and that he reported that he had been injured moving boxes at work on \_\_\_\_\_. Other records reflect that the claimant told a physician's assistant on July 15th that he injured his back lifting a box at work on \_\_\_\_\_ and that he was referred to (Dr. A).

X-rays done on July 15th showed that the claimant's thoracic spine has mild degenerative spurring at multiple levels and that his lumbar spine has minimal degenerative changes at two disc levels and mild joint arthritis at L5-S1. Dr. A wrote on September 2nd that the claimant has pain in his neck and low back with some limitation of motion. An MRI of the claimant's cervical spine done on September 12th showed degenerative disc disease at C3-4 and C6-7 with no definite neural impingement and a very small disc protrusion at C3-4. An MRI of the claimant's lumbar spine done the same day showed degenerative disc disease at T12-L1, L4-5, and L5-S1, and a "tiny right paracentral disc protrusion superimposed on diffuse annular bulging at the L5-S1 level." The radiologist noted that definite neural impingement had not been demonstrated. X-rays of the claimant's thoracic spine done in October showed mild degenerative changes and a bone scan of the thoracic and lumbar spine done that month was reported to be normal.

The hearing officer found that the claimant did not injure any portion of his body at work on \_\_\_\_\_ and that the claimant's inability to obtain and retain employment was not due to a work-related injury. The hearing officer concluded that the claimant did not sustain a compensable injury on \_\_\_\_\_ and that the claimant has not had disability. There is conflicting evidence regarding the claimant's claim of a work-related injury. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer states in her decision that she found other witnesses to be more credible than the claimant. As the trier of fact the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. The fact that the claimant was shown to have some back abnormalities on diagnostic testing does not mean that the hearing officer had to find that he was injured at work as claimed. Whether the claimant was injured at work was a fact question for the hearing officer to determine from all of the evidence presented at the CCH. The claimant's complaint about the effectiveness of his counsel is not grounds for reversal of the hearing officer's decision. We conclude that the hearing officer's decision that the claimant did not sustain a compensable injury on \_\_\_\_\_ is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Judy L. Stephens  
Appeals Judge