

APPEAL NO. 990493

On February 11, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the CCH was whether the appellant (claimant) sustained a compensable injury on or about _____. The claimant requests review and reversal of the hearing officer's decision that claimant did not sustain a compensable injury on _____. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

On September 15, 1997, claimant underwent a physical examination that was reported as normal and lumbar x-rays done on that date were reported to be negative. Claimant began working for the employer, on September 2, 1998, as a warehouse laborer. Claimant testified that on Thursday, _____, he, MG, and BR were working together at the employer's warehouse dock dumping soybeans from 50-pound bags into larger bags; that he lifted a 50-pound bag from the pallet to carry it to a table two or three feet away where it would be cut open; that while carrying the bag to the table, he slipped on soybeans that were on the floor, did a split with his legs but did not fall down, and felt a pop in his back when the bag jerked him back. He said he felt some pain when he was jerked back; that he continued to work the rest of his shift; that that evening he felt more pain; that he worked the next day but was hurting and walking stiffly; that he reported his injury to his supervisor on September 11th; that he was not scheduled to work that weekend; and that on Monday, September 14th, he had low back pain and his employer sent him to Dr. J. Claimant said he did not work for the employer after September 14th and that he obtained a job with another employer on September 22, 1998, where he does not have to do any lifting and that he has continued to work for the other employer.

MG testified that he is a forklift operator for the employer, that on _____ he, claimant, and BR were working together to get the soybeans into larger bags, that the pallet of bags was on the raised forks of the forklift, that the bags were slid from the pallet to the table to be opened and then dumped into the larger bags, that there was no need to actually lift a bag because they were slid from the pallet on the forklift down to the table, that the three men were working close together, that claimant did not lift the bags but slid them over to the table from the pallet, that he did not see claimant slip, that claimant did not say anything to him about slipping, that claimant was walking funny on September 11th, and that on September 11th claimant said that he was sore from too much exercise at home.

BR testified that he mainly does cleanup work in the warehouse, that he did not hear claimant call out, that sometime later claimant asked him to do claimant a favor regarding claimant's being hurt, and that he told claimant he could not do that because he cannot lie

to anyone. Claimant said he only asked BR to be a witness if BR had seen anything and that he did not ask BR to lie.

Dr. J examined claimant on September 14, 1998, and Dr. J reported that claimant told him that he felt sharp pain in his lower back when he did the splits while transferring and walking with 50-pound bags at work on _____. Dr. J diagnosed a lumbosacral strain and referred claimant to Dr. L. An MRI of claimant's lumbar spine done on September 18, 1998, showed degenerative disc disease and a disc herniation at L5-S1. In a report dated October 8, 1998, Dr. L reported in the history section of his report that claimant was injured at work on _____, when he was lifting 50-pound bags of soybeans and slipped and twisted his back. Dr. L noted the MRI findings and diagnosed claimant as having an L5-S1 disc herniation.

Claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer found that claimant did not injure his lower back while working for the employer on _____, and he concluded that claimant did not sustain a compensable injury on _____. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and is not contrary to the great weight and preponderance of the evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge