

APPEAL NO. 990501

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 February 17, 1999. The issue at the CCH was did the \_\_\_\_\_, compensable injury extend to the back. The hearing officer determined that the compensable injury extended to the claimant's back. The appellant (carrier herein) appeals this determination on sufficiency grounds. The respondent (claimant herein) asserts that the Appeals Panel should affirm the decision of the hearing officer.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable hernia injury on \_\_\_\_\_. The claimant testified that, on \_\_\_\_\_, he injured himself when he lifted a barrel at work which caused immediate pain in his groin. The claimant testified that two to three days later his back started hurting, but he was more concerned about the hernia pain. Dr. P examined the claimant on July 27, 1998. Dr. P's Initial Medical Report indicates that the claimant complained of low back pain. Dr. P took x-rays and diagnosed the claimant with lumbosacral strain, herniated nuclear pulposus at L4-L5 and L5-S1, lumbar radiculopathy, and left inguinal hernia. The claimant testified that he had hernia surgery on September 9, 1998, but, after the hernia was repaired, he still felt back pain. Dr. P referred the claimant to Dr. D, an orthopedic surgeon, who examined the claimant on October 23, 1998. Dr. D's diagnoses were the same as Dr. P's. Both Dr. P and Dr. D state in their medical reports that the claimant's low back injury was overshadowed by the pain caused by the inguinal hernia.

The carrier argues that the medical evidence and the claimant's testimony are not credible, and that the claimant did not mention a back injury in a recorded statement taken by the adjuster on July 28, 1998, the day after the claimant was examined by Dr. P. The claimant testified that he did not mention his back injury in the recorded statement taken by adjuster. The hearing officer considered this and stated that the claimant was credible in testifying that he was nervous at the time of the statement and that his primary concern was the hernia.

The claimant had the burden to prove that he injured his back on \_\_\_\_\_. 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 July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence.

Section 410.165(a). Based on the evidence presented, the hearing officer concluded that the claimant met his burden of proving he sustained a back injury on \_\_\_\_\_. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the \_\_\_\_\_, compensable injury extends to the claimant's back.

The decision and order of the hearing officer are affirmed.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge