

APPEAL NO. 990524

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 9, 1999. The issues at the CCH were did the appellant (claimant herein) sustain a compensable injury on or about _____, and did the claimant have disability, and if so, for what period. The hearing officer concluded that the claimant did not sustain a compensable injury on _____, and the claimant does not have disability. The claimant requests reversal of the hearing officer's decision that he did not sustain a compensable injury and did not have disability. The respondent (carrier herein) urges that the hearing officer's decision is not against the great weight and preponderance of the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained an injury to his left lower leg and back while working as a deck hand on _____. The claimant testified that a drill pipe slipped and hit his leg, causing a broken left fibula and low back injury. The claimant testified that immediately following the injury he thought his leg was bruised and he did not think he was injured. The claimant worked a full shift on _____ and August 11, 1998. The claimant testified that he did not sign the daily report drilling form and report an injury because he did not want his coworkers to lose their safety bonus. The claimant testified that he did not work on August 12, 1998, because it took him three hours to get out of bed. The claimant reported to work at another rig on August 15, 1998, but only worked 30 minutes because his friend was fired and the claimant quit.

The claimant went to the emergency room the evening of August 18, 1998, on crutches. Diagnostic testing indicated a fracture of the left lower fibula. The claimant sought medical treatment with Dr. H on August 24, 1998. Dr. H put the claimant in a leg cast and diagnosed a contusion of the right lumbar region. Dr. H took the claimant off work and on December 22, 1998, Dr. H released the claimant to return to work. The claimant testified that he had disability on August 12 and 13, and August 15 through December 22, 1998.

The evidence presented was contradictory. The claimant testified that the daily report drilling form was not initialed by him, although the form in evidence contains the claimant's initials. The claimant's testimony conflicted with the written statements of three of the claimant's coworkers. Mr. P stated the claimant said he did not want to go to the hospital, was not hurt, and worked that day (_____) without any problems. Mr. M stated the claimant showed up for work on August 15, 1998, did not report any prior injuries and did not show any signs of injury. Mr. H stated that on the 10th, 11th and 12th of July (sic), the claimant said nothing about having an accident and was not seen limping.

The claimant had the burden to prove that he injured himself as claimed 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). He resolved contradictions in the evidence against the claimant and concluded that claimant did not meet his burden of proving he sustained a compensable injury. 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 claimant did not prove he sustained a compensable injury.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Elaine M. Chaney
Appeals Judge