

APPEAL NO. 990574

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 12, 1999, with the record closing on February 19, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____, and whether the claimant had disability. The hearing officer found that the claimant sustained a compensable injury on _____, and had disability from September 18, 1998, to January 26, 1999. The appellant (carrier) appeals the findings of fact and conclusions of law of the hearing officer on sufficiency grounds. The claimant responds that sufficient evidence supports the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, he was using a sledgehammer to break up concrete and the sledgehammer hit a piece of steel in the concrete, causing back pain. The claimant testified that he told the others on the job site, his brother, Mr. RC, and Mr. WC, his supervisor, that his back was hurting. The claimant testified that he continued working his regular job duties following the injury until he was terminated from employment on September 15, 1998. The claimant stated that he complained of his back injury to Mr. DC, the director for employer, prior to being terminated for inappropriate use of company property. The claimant testified that he sought medical treatment at a clinic on September 18, 1998, and was taken off work. The claimant testified that he was unable to work as a result of the back injury from September 18, 1998, through the date of the CCH. The claimant was incarcerated on January 26, 1999, for probation violation, and remained incarcerated as of the date of the CCH.

The carrier's witnesses, Mr. DC and Mr. WC, contradicted the claimant's testimony. Mr. DC testified that he met with the claimant and fired him on the morning of September 15, 1998, and the claimant did not mention having sustained an injury. Mr. DC testified that his first knowledge that the claimant was alleging an injury was a recorded message he received from claimant on the afternoon of September 15, 1998. Mr. WC testified that he overheard a conversation that the claimant was having with Mr. RC in which the claimant told Mr. RC that he had hurt his back, but the claimant did not specifically state the cause of his back pain. Mr. WC testified that the claimant, on September 10, 1998, did say that his back was hurting because of the sledgehammer, but Mr. WC did not think it was serious because the claimant had made prior back complaints.

The medical evidence shows the claimant sought medical treatment with Dr. E on September 18, 1998, was taken off work, and prescribed therapy. On September 23, 1998, the claimant was examined by Dr. A, who diagnosed disc disorder, thoracic radiculitis/neuritis, segmental dysfunction lumbar, and lumbar strain.

The claimant had the burden to prove that he injured his back on _____, and had disability. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. This is so, even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable injury on _____, and had disability from September 18, 1998, to January 26, 1999.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge