

APPEAL NO. 990778

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 March 16, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and whether he had disability. The hearing officer determined the claimant did not sustain a compensable injury and did not have disability. The claimant appeals, urging the hearing officer's decision is contrary to the credible evidence, and requests the decision be reversed and remanded for a new hearing. The respondent (carrier) responds that the hearing officer's determinations are sufficiently supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, he injured his back while moving a motor on a dolly. The claimant testified that he was moving the motor across an alley and a truck hit the dolly, throwing him against a door. The claimant testified that he received medical treatment at Clinic 1 and Clinic 2. The claimant testified that on the date of injury he had two other jobs, both at factories. After the injury, the claimant worked at one factory for one week and at the other factory for two months, both at wages less than his wages with the employer where he was injured. The claimant testified that he had to leave both factory jobs because he could not perform the work due to his injury. The claimant asserted disability from \_\_\_\_\_, through the date of the CCH.

The carrier presented the testimony of Mr. A, to support its position that the claimant did not sustain an injury on \_\_\_\_\_. Mr. A testified that he was in the alley at the time of the alleged injury. According to Mr. A, he saw the claimant clearly throughout the entire period that the claimant was traveling through the alley. Mr. A testified that a truck did not come into contact with the block, the dolly, or the claimant, and that the claimant set the dolly down on a ramp, and the block rolled off the dolly. Mr. A stated that he put the block back on the dolly, and the claimant continued working. Mr. A testified that the claimant did not fall or say that he was injured. On cross-examination, Mr. A testified that he was able to see the truck, the hand cart, and the claimant simultaneously.

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 sustain an injury in the course and scope of employment 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 claimant did not sustain a compensable injury on \_\_\_\_\_.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "Athe 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.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge