

APPEAL NO. 991087

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 April 26, 1999. The issue at the CCH was whether respondent (claimant) sustained a compensable injury and whether he had disability. The hearing officer determined that claimant sustained a compensable injury on \_\_\_\_\_, and that he had disability from (2 days after date of injury), through October 29, 1997. Appellant (carrier) appealed, contending that the evidence does not support the hearing officer's determinations. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury on \_\_\_\_\_, is not supported by sufficient evidence. Carrier asserts that any back injury was sustained by claimant as he exited his truck before he came to work. Carrier also contends that claimant failed to report that his back problems were work related until he was terminated on (2 days after date of injury), and did not pursue his workers' compensation claim for two years. Carrier complains that the hearing officer believed a theory of aggravation, which was not asserted by claimant.

The applicable law regarding injury and the burden of proof and our appellate standard of review are stated in Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Section 401.011(26); Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992; Section 410.165(a); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); and Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that he arrived at work at (employer) on \_\_\_\_\_. He said he first went around to an auto repair business behind employer's building because he was having problems with his truck. Claimant said he then tried to enter employer's building by lifting a door that he thought would be unlocked, but it was locked and he felt a stinging sensation in his back. He said he told the regional manager, Mr. P, that same day that he felt something in his back and he needed to see a doctor. Claimant said he came to work on (day after date of injury) and April 17th and that he was terminated on (2 days after date of injury). Claimant testified that he was not sure why he was terminated. Claimant denied that he told Mr. L, a manager with employer, that he hurt his back getting out of his truck. Mr. L testified that claimant said he hurt his back getting out of his truck at a gas station and that he never said anything about hurting it while lifting a door at work. Mr. P testified that on \_\_\_\_\_, claimant told him that he felt his back "tighten" while getting out of his truck and that he felt a "twinge" when he pulled on the door. Mr. P said claimant told him he was not sure how the injury happened. He said that the next day, (day after date of injury), claimant asked him about how his chiropractor bill would be paid and Mr. P told claimant to pay for it himself. Mr. P testified

that he then had a heated discussion with claimant about whether a workers' compensation report needed to be filed, and claimant "dropped it" at that time. Mr. P said that he fired claimant the next day because claimant indicated that he was going to be difficult regarding a new manager who had been hired. In a transcribed statement, one of claimant's coworkers said that on \_\_\_\_\_, claimant told him that he might have injured himself trying to open the back door and that he was going to the doctor. Mr. T, a mechanic at an auto repair shop, stated that on \_\_\_\_\_, claimant came to his shop, then went to employer's back door and tried to open the door. He said claimant then went around to the front of employer's store. Mr. T said claimant came back out about an hour later, that claimant was walking "stiff," and that he said he had a twinge in his back. He said he had never seen claimant complain of back problems before. Dr. M diagnosed claimant with disc displacement, sciatica, muscle spasms, and overexertion. In a January 4, 1999, letter, Dr. M noted that claimant reported severe pain about an hour after his lifting injury. Dr. M said it is not unusual for there to be a delay between the time of injury and the onset of pain.

In this case, the evidence conflicted regarding whether claimant sustained a compensable injury while pulling on a door at work. Claimant testified that he injured his back at work, but denied that he had injured his back getting out of his truck. The hearing officer determined that "the most likely scenario" was that claimant hurt his back getting out of his truck and then also sustained an "aggravation" injury while lifting the door at work. Aggravation was not a theory advanced by claimant and he denied that he hurt his back getting out of his truck. There is little, if any, evidence to support a determination that claimant injured his back getting out of his truck or that claimant sustained an aggravation type injury. However, there is evidence from which the hearing officer could and apparently did determine that claimant sustained a compensable back injury pulling on the door at work. We will not substitute our judgment for the hearing officer's because her determination that claimant did sustain a compensable back injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier asserts that, after claimant's injury, he came to work on both (day after date of injury) and (2 days after date of injury), intending to work, and that this showed he could earn his preinjury wage. Carrier contends that any inability to earn his preinjury wage was due to the fact that claimant's employment was terminated. Carrier also contends that claimant could have performed his normal job duties even with the 20-pound lifting restriction imposed by Dr. M. We apply the Cain standard of review to this challenge. The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995.

Claimant testified that he came to work (day after date of injury) and (2 days after date of injury) and that he was having back problems. He said that from (2 days after date of injury), to October 29, 1997, he was able to work very light duty only. Claimant also said he could not work during that period of time and that his doctor took him off work. Claimant testified that he returned to work for another employer in late October 1997, but that he was still having difficulty performing his work at that time. A note from Dr. M states that claimant may return to regular

work as of June 6, 1997, with restrictions of no lifting over 20 pounds with the recommendation that claimant wear a back brace.

The evidence from claimant supports the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Regarding whether claimant could have performed his regular job duties or whether his inability to earn his preinjury wage was caused by his termination, these were factors for the hearing officer to consider in making her determinations. She determined what facts were established by the evidence. We perceive no error in her disability determination.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge