

APPEAL NO. 991286

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 June 1, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight of the evidence and should be reversed. The respondent (carrier) replies that the decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant testified that he injured his back at work on _____, while assembling toilets. The claimant testified that on that day he began to have a backache when he was bending to install parts into the toilet tanks. Later that day, he lifted a toilet with the assistance of a coworker and felt a cramp in his leg that ran from his lower back to the back of his left knee. The claimant testified that he finished work that day, took a pain reliever that night, and worked on the next day, the last day prior to the plant shut down through January 1, 1999. The claimant was scheduled to return to work on January 2, 1999.

The claimant testified that on the night of December 23, 1999, he began feeling the same cramp in his left leg and on December 24, 1999, he sought medical treatment with Dr. V. Dr. V referred the claimant to Dr. D who diagnosed a herniated lumbar disc at L5-S1 with cauda equina syndrome and performed emergency surgery on December 29, 1998.

On January 4, 1999, the claimant went to his employer and filled out an employee accident report. On the report, the claimant described how the accident occurred as "I do not know." The claimant testified that he could not put down exactly when the injury happened because he did not know. The claimant testified that he has been unable to work from December 22, 1998, through the date of the CCH.

Dr. V's notes of December 24, 1998, indicate that the claimant gave a history of no known injury with a gradual onset of pain. In a letter dated February 12, 1999, Dr. V states that on December 24, 1998, he specifically questioned the claimant about his work and that the claimant said he had no known injury. Dr. D's medical report of December 29, 1998, indicates that the claimant said he was lifting some toilets and developed back pain.

The carrier presented the testimony of Ms. W, to support its position that the claimant did not sustain an injury on _____. Ms. W, a registered nurse for employer, testified that when the claimant came in to report an injury on January 4, 1999, she did not tell him what to put on the form. According to Ms. W, the claimant told her that he did not

know what happened. The carrier also presented the statements of two of the claimant's coworkers, who state that the claimant did not mention any back pain or back injury on _____.

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 history of an injury as reported by a claimant and contained in the history portion of medical reports does not necessarily compel a finding that an injury occurred as recited in the history. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). She resolved contradictions in the evidence against the claimant and concluded that the preponderance of the evidence does not support the claimant's position. 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 "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:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge