

APPEAL NO. 991891

On August 4, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were whether appellant (claimant) sustained a compensable injury on _____, and whether he had disability. Claimant appeals the hearing officer's decision that claimant did not sustain a compensable injury on _____, and that he did not have disability. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

Claimant was employed by (employer) and was assigned to work at (client 1). Claimant testified that on _____, he was working at client 1 when he and RH lifted a heavy roll of material off a laminator machine and that when they lifted the roll, he had back pain that radiated down his right leg, and that he went down on one knee. He said that he injured his lower back, upper back, and thumb. Claimant said that on _____ he told TG, who was the operator of another laminator machine, and HD, who was client 1's plant manager, that he had hurt his back. Claimant said that HD told him to report his injury to employer and asked him to finish his shift. Claimant said that he barely finished his shift and then went to employer and reported his injury to a woman in the office named Ms. G and then reported the injury to another woman in the office. Claimant did not work for client 1 after _____. Claimant said that employer denied him medical treatment and assigned him to work at (client 2) and that he worked there on a drill press on October 29th and for half a day on October 30th. He said that he was hurting too bad to continue work.

Claimant went to a hospital emergency room (ER) on October 30, 1998, and the ER records note that claimant reported that he does heavy lifting at work and that he complained of pain on his right side that went down his leg and that that pain had started two or three days before. The ER records also note that claimant said that he felt like he had the flu. X-rays of claimant's hips done on November 3, 1998, showed degenerative changes. Claimant said that he went to Dr. M, who, he said, took him off work and referred him to Dr. S, D.C. Claimant began treating with Dr. S on December 2, 1998, and Dr. S diagnosed claimant as having a displacement of an intervertebral disc, thoracic or lumbosacral neuritis or radiculitis, and a wrist sprain. Claimant said that Dr. S took him off work and that he has not worked since October 30th. Dr. S's reports reflect that claimant told him that he was injured at client 1 lifting heavy rolls of material. Dr. S reported that claimant reached maximum medical improvement (MMI) on July 13, 1999, with an 18% impairment rating (IR). Dr. B examined claimant at carrier's request and he reported that claimant reached MMI on May 20, 1999, with a 10% IR. Dr. B later reported that the only thing that connected claimant's back pain to a work-related injury was claimant's assertion that he was injured at work.

RH and TG stated in written statements that claimant never mentioned anything to them about an injury and that they did not witness an accident with claimant involved. HD testified that claimant did not tell him on _____ that he had been injured and that he did not learn that claimant was claiming a work injury until after claimant stopped working for client 1. HD stated in a written statement that on _____ claimant told him that he, claimant, might have to go to a doctor for the flu, but did not mention an injury at work. Several other employees of client 1, who HD said were working with claimant on _____, gave written statements stating that claimant did not mention an injury to them and that they did not witness an accident with claimant involved. LM, a plant foreman at client 2, stated in a written statement that claimant worked for client 2 on October 29th and for half a day on October 30th, that on October 30th claimant told him that he needed to take off to see a doctor, that claimant did not return to work, that claimant did not let client 2 know that he had any problems performing his work, and that claimant was performing his work with no complaints.

JH, employer's branch manager, testified that LE at client 1 called her on _____ and asked her to replace claimant. JH stated in a written statement that client 1 wanted to have claimant replaced because of claimant's "attendance." JH testified that she told claimant on _____ that his assignment at client 1 was over and that claimant did not tell her at that time that he had been injured. JH said that on October 28th she told claimant of his assignment at client 2 and claimant did not tell her at that time that he had been injured. JH said that on November 2nd LM at client 2 informed her that claimant had another doctor's appointment, that he did not know what it was for, and that he wanted to have claimant replaced. JH said that on November 2nd she left a message at claimant's home. JH said that on November 3rd claimant told her for the first time that he had been injured at client 1. GM, who JH identified as the only other employee besides herself working in employer's office prior to November 3rd, stated in a written statement that claimant had not mentioned a work injury to her.

Claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant also had the burden to prove that he had disability, which is defined in Section 401.011(16) as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer found that claimant was not injured in the course and scope of his employment on _____, while removing a roll from a laminating machine and he concluded that claimant did not sustain a compensable injury on _____, and that claimant has not had disability because claimant did not sustain a compensable injury. Claimant asserts on appeal that he was injured and that witness statements are not true.

There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that

of the trier of fact. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge