APPEAL NO. 000011

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 1999. The record closed on December 10, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of the claimed injury was _____; that the claimant timely reported the injury; and that the claimant did not have disability. The claimant appeals the compensability and disability determinations, expressing his disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The findings of a date of injury of _____, and timely notice of the injury have not been appealed and have become final. Section 410.169.

DECISION

Affirmed.

The claimant's job involved cutting iron bars, tubes, and rods. He testified that it required picking up the objects with both hands, positioning them on the cutter and then restacking the cut pieces. On a busy day, he estimated he cut up to 700 pieces per day. Claimant said he felt pain in both wrists on _____, when lifting a piece of angle iron. He said he told Mr. Z, his supervisor, that his hands hurt that day, but admitted he did not say why. After work he saw his personal doctor who diagnosed possible bilateral carpal tunnel syndrome (BCTS). An EMG confirmed the BCTS and claimant eventually had bilateral surgery. On March 30, 1999, he obtained a short-term disability form which he presented to his employer that day. On the form claimant indicated a work-related condition and for this reason, short-term disability benefits were denied. In a letter of November 9, 1999, Dr. A, the surgeon, wrote that while there could be other reasons for the development of BCTS, such as rheumatoid arthritis, the claimant "has not come down with anything that would make me think that he has that or any other generalized illness."

Mr. Z, the supervisor, testified that claimant told him before he began working on _____, that his arms hurt, but did not say why and that he might have slept on them. Mr. Z also testified that the claimant's job involved more pulling than lifting. In a transcribed interview, a coworker stated that the claimant never indicated to him that he was hurt, nor did he ever ask for first aid.

The claimant had the burden of proving he sustained a compensable injury as claimed. 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 considered the evidence on the theory both of a claim of repetitive trauma over the many years the claimant worked for the employer and of a single incident trauma. Under either theory, the parties agreed the date of the claimed injury was _____. In his discussion of the evidence, the hearing officer noted the discrepancy

between the claimant's testimony that he had to lift the iron with both hands and Mr. Z's testimony that the job involved primarily pulling the iron onto the cutting machine and between the claimant's statement that he experienced pain in his arms while working and Mr. Z's statement that claimant complained of hand pain even before he started work. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. He was not persuaded by the claimant's evidence that he met his burden of proof and resolved the credibility question against the claimant. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge