

APPEAL NO. 000037

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 December 8, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he sustained disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and thus did not have disability. The claimant appeals the hearing officer's determinations, urging that the evidence he presented established that he was injured at work on _____, and that he had disability. He asks that the decision be reversed and a decision rendered in his favor. Respondent (carrier) argues that there is sufficient evidence to support the findings and conclusions of the hearing officer and urges affirmance.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and it will only be summarized here. The claimant claims an injury to his neck and left shoulder while on a new job assignment requiring the throwing of straps over a flatbed truck to secure loads. Claimant, who is right-handed, performed this function on Friday, _____, and states the next morning he was "hurting" in his neck and left shoulder. He went to work the following Monday and worked, but told his supervisor that he was hurting but did not know if it was from throwing the straps. In any event, because he lacked funds, he states he went to an emergency room (ER) that Friday, (one week after injury). He was told he pulled a muscle and was given a light-duty release for 10 days. He worked light-duty the next week and was told that the following week he would go back to his regular job. The first day back, "everything just flared up again" and he went back to the ER; a neck injury strain was diagnosed with a follow-up appointment to be made. Since no appointment was made, claimant found a chiropractor in the phone book, Dr. W, and saw him on September 14, 1999. A letter from Dr. W dated October 27, 1999, lists his impression of "signs of cervical nerve root compression and strain/sprain as well as strain/sprain of the left shoulder girdle." Dr. W stated the injuries are consistent with the type of injury the claimant states was sustained.

It was brought out on cross-examination, through the testimony of the employer's president, and through medical records, that the claimant had a history of cervical/shoulder problems, basically on the right side, and that he had been off work a number of times for medical reasons related to these problems. There was also evidence that he denied to the employer that they were ever work related, and that he had been diagnosed with degenerative joint and disc disease in a (VA) hospital report of June 18, 1999, and had several records of complaints of cervical pain in 1998. Another report from the VA hospital dated August 26, 1999, indicates the claimant was complaining of increased arthritis pain

over the past three months. The claimant could not remember the source of his earlier neck and arm pain.

The hearing officer apparently did not find the claimant to be convincing as to a work-related injury in her consideration of all the evidence before her. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), she was not bound to accept the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The burden of proof to establish a compensable injury was on the claimant. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Here, there was sufficient evidence in the testimony of the employer's president, the prior medical records, and the conditions surrounding the mechanics of the claimed injury for the hearing officer to determine that a compensable injury had not been proven by a preponderance of the evidence. Without a compensable injury, there is no disability as defined by the 1989 Act. Section 401.011(16). Only were we to conclude from our review of the evidence that her findings of fact were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb her decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

We do not conclude that is the situation here and accordingly affirm her decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge