

APPEAL NO. 000099

On December 16, 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 hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury on _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The employer manages several apartment complexes. On _____, PD was employer's property supervisor and was the supervisor of claimant and EV, who worked as housekeepers for employer. Claimant testified that on _____, PD instructed her and EV to move PD's furniture and other items from PD's apartment in an apartment complex managed by employer to PD's new apartment in another apartment complex managed by employer. Claimant described several pieces of furniture, trash bags of clothes and other items, and boxes of items she said she and EV moved from PD's old apartment to PD's new apartment the afternoon of _____ using a coworker's pickup truck. Claimant said that about 4:30 p.m. she injured her back when she lifted a box of heavy stereo speakers during the moving process. EV stated in a written statement that the afternoon of _____, she and claimant moved PD's furniture from one apartment complex to another and that claimant injured her back that afternoon while lifting and moving furniture and other items. Claimant said that she and EV are not friends. Claimant went to Dr. B on July 14, 1999, and he diagnosed claimant as having lumbago and later diagnosed her as having lumbar radicular syndrome. Claimant began seeing Dr. M in August 1999 and he noted that claimant told him that on _____, she was asked at work to move furniture from one apartment to another and that she hurt her back doing that. Dr. M wrote that a lumbar MRI was normal and diagnosed claimant as having a low back strain with radicular symptoms.

PD testified that on _____ she told claimant and EV to clean the apartment that she was moving out of; that she did not tell them to move anything; that the evening of _____, when she and three maintenance employees and a neighbor began moving her furniture and other items to the new apartment, the stereo speakers were not in a box because they had not yet been disconnected; that she had one of the men who was helping her move that evening disconnect the stereo speakers; that when she and the men arrived at the new apartment that evening the only things in the new apartment were a couple of trash bags of her clothes; that the speakers and furniture were moved to the new apartment that evening by the men that were helping her move; and that claimant and EV are close friends. RT, who is one of the maintenance men PD said helped her move the evening of _____, testified that he and two other maintenance men and PD's neighbor moved

PD's furniture and other items, including boxes and bags, to PD's new apartment the evening of _____ as a favor to PD and that when they arrived at the new apartment the only things there were a couple of trash bags of clothes. RH, another maintenance man PD said helped her move the evening of _____, stated in a recorded statement that he helped PD move her furniture to the new apartment the evening of _____ and when he was asked if there was any furniture or anything in the new apartment when they first went into it, RH said "no."

The hearing officer found that claimant performed light-cleaning work at PD's old apartment on _____; that claimant did not move furniture or do any heavy lifting related to PD's move on _____; that claimant did not strain her back or sustain any other injury to her back as a result of a claimed incident on _____; and that claimant was not unable to obtain or retain employment at her preinjury wages as a result of a claimed injury of _____. The hearing officer concluded that claimant did not sustain a compensable injury on _____, and that claimant did not have disability resulting from the claimed injury of _____. Claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The trier of fact may believe that a claimant has an injury but disbelieve claimant's testimony that the injury occurred at work. Johnson, supra. There is much conflicting evidence in this case and the hearing officer, as the trier of fact, had the responsibility to determine the weight and credibility to be given to the evidence and to resolve the conflicts in the evidence. The hearing officer may believe all, part, or none of the testimony of a witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). 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:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge