APPEAL NO. 000103

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 13, 1999. The issues at the CCH were whether the respondent (claimant) sustained an injury in the course and scope of employment on _____; whether the claimant had disability, and whether the appellant (carrier) specifically contested compensability on the issue of course and scope of employment pursuant to Section 409.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6). The hearing officer determined that the claimant sustained an injury in the course and scope of employment on _____; that the claimant had disability resulting from the injury sustained on _____, from April 17, 1999, through the date of the hearing; and that the carrier specifically contested compensability on the issue of course and scope pursuant to Section 409.022 and Rule 124.6. The carrier appeals, urging that the hearing officer's determinations that the claimant sustained an injury in the course and scope of employment and had disability are either insufficiently supported by the evidence or so contrary to the evidence as to be manifestly unjust, requiring reversal. The appeals file contains no response from the claimant. The hearing officer's determination that the carrier specifically contested compensability on the issue of course and scope of employment pursuant to Section 409.022 and Rule 124.6 has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that he worked for the employer at a construction site, hanging sheet rock and installing framing. The claimant testified that on _____, he felt pain in his left foot when he pushed a dolly loaded with sheet rock, and when he tried to climb a ladder he was unable to because of his foot pain. The claimant did not complete his shift that day, and sought medical treatment with Dr. S on April 17, 1999. Dr. S diagnosed the claimant with a possible tendon rupture, placed the claimant's left foot in a soft cast, and issued an off-work slip which stated that the claimant was to stay off his feet or stay out of work for one week. Dr. S's medical records indicate that the claimant gave a history of being injured at work while performing a pushing motion.

On May 3, 1999, the claimant sought medical treatment with Dr. C. The claimant testified that he told Dr. C that he went up and down a ladder many times on _____, and that he first felt left foot pain while he was pushing the dolly. Dr. C's report of May 3, 1999, states that the claimant was carrying a sheet of sheet rock up and down a ladder several times when he started to have left foot pain. Dr. C's report of August 13, 1999, states that the claimant was injured pushing a dolly containing 16 sheets of sheet rock. Dr. C testified that on May 3, 1999, the claimant did not give a history of pushing a dolly, but did mention it at a subsequent visit and he revised his report accordingly. Dr. C opined that

the cause of the claimant's injury was pushing a dolly loaded with sheet rock. According to Dr. C, a definite diagnosis cannot be obtained until an MRI is performed, the claimant's present diagnosis is ankle pain/foot pain, and the claimant has a possible diagnosis of tarsal tunnel syndrome or partial rupture of the tibial tendon.

The claimant testified that he told his coworkers about an injury to his left knee which occurred at home, but did not tell his coworkers that his left foot injury occurred at home. In support of his position, the claimant provided statements from coworkers who state that the claimant was injured at work on _____. The carrier presented witness statements from other coworkers who state that the claimant said that he had injured his foot at home, not at work.

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 hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer resolved contradictions in the evidence for the claimant and concluded that the claimant did meet his burden of proving he sustained a compensable injury. The hearing officer found the claimant's testimony credible in setting forth the onset of pain while pushing the dolly, although Dr. C's records indicate that the claimant gave a different history of injury. The witness statements confirm that on _____, the claimant was pushing a dolly with sheet rock and shortly thereafter took off his shoe and sock and rubbed his foot, stating that he was in pain. Although the carrier argues that the claimant did not prove that he sustained damage or harm to the physical structure of his body, Dr. S found edema upon examination on April 17, 1999, and both Dr. S and Dr. C indicate that the claimant may have a ruptured tendon. We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained an injury in the course and scope of employment on _____.

The carrier appeals the hearing officer's determination of disability, asserting that Dr. S indicated that the claimant only needed to stay off work for one week, and the records and testimony of Dr. C are not credible. The claimant testified that he has been unable to work from April 17, 1999, through the date of the hearing because of left foot pain and numbness, and this is supported by the medical records. Whether disability exists is a

question of fact for the hearing officer to decide and can be established by the testimony of the claimant if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We find the evidence sufficient to support the hearing officer's finding that the claimant had disability from April 17, 1999, through the date of the CCH.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge