APPEAL NO. 000174

On January 4, 2000, 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: (1) whether respondent (claimant) sustained an injury in the course and scope of his employment on _____; (2) whether claimant has had disability from the alleged injury of _____; and (3) claimant's average weekly wage (AWW). The hearing officer decided that claimant sustained an injury to his low back at L4-5 in the course and scope of his employment on _____; (2) that claimant had disability resulting from the injury of _____, beginning on March 30, 1999, and continuing through the date of the CCH; and (3) claimant's AWW is $253.69. Appellant (carrier) requests that the hearing officer's decision that claimant sustained an injury to his low back in the course and scope of his employment on _____, and that claimant has had disability from March 30, 1999, through the date of the CCH be reversed and that a decision be rendered in its favor on those issues, or in the alternative, that the hearing officer's decision on those issues be reversed and the case be remanded to the hearing officer. No response was received from claimant. There is no appeal of the hearing officer's decision on the AWW issue, which was based on a stipulation of the parties.

DECISION

Affirmed.

Claimant had the burden to prove that he was injured in the course and scope of his employment and that he had disability. Claimant testified that on _____, he was performing his usual custodial duties at employer's school when he threw a 30- to 50-pound bag of trash over his head into a dumpster and felt shoulder stiffness; that about an hour later he began having lower back stiffness; and that the next morning he had pain in his left buttock and left leg. Claimant sought medical care for his back pain; an MRI was done, which showed a herniated disc at L4-5; and he had back surgery for the herniated disc on August 16, 1999. SL, employer's personnel clerk, testified for carrier. Medical reports and written and recorded statements were presented. The hearing officer provides a fair summary of the evidence in his decision and he resolved the conflicting evidence in favor of claimant. The hearing officer made findings of fact and concluded that claimant sustained an injury to his low back at L4-5 in the course and scope of his employment on _____. 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. We conclude that the hearing officer's findings, conclusion, and decision on the issue of whether claimant sustained an injury in the course and scope of his employment on _____, are supported by sufficient evidence and are 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). Carrier's appeal of the hearing officer's decision that claimant has had disability from March 30, 1999, through the date of the CCH is premised on its

contention that claimant did not sustain a compensable injury. Claimant's testimony concerning his inability to work after the injury and the medical records support the hearing officer's decision on the disability issue and his decision on that issue is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Elaine M. Chaney
Appeals Judge