APPEAL NO. 000263

On January 11, 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 whether appellant (claimant) sustained a compensable injury on _____, and whether he has had disability from a compensable injury on _____. The hearing officer resolved the disputed issues by deciding that claimant did not sustain a compensable injury on or about _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision on both issues be reversed and that a decision on both issues be rendered in his favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

On July 8, 1999, claimant began working for (employer) and was assigned to work a temporary position at (company) as an order puller in the warehouse. Claimant testified that during the morning of _____, he was working in company's warehouse filling a large order when he lifted a 50-pound box and felt pain in his right shoulder and groin; that prior to going to lunch at 2:00 p.m., he told his warehouse supervisor, RR, that he had hurt his shoulder and groin; that when he returned from lunch at 3:00 p.m., LP, another warehouse supervisor, told him that work had slowed up and to come back tomorrow; that he went home; that he did not report his injury to LP; that the next day, _____, he continued to have right shoulder pain; that the morning of _____ he went to company's warehouse and MG, company's warehouse manager, told him that work had slowed up and that company would no longer need him; that he asked MG if RR had told MG about his injury and MG said "no" and that claimant should talk to employer; that he then went home and called employer on _____ and told KW, a staffing manager for employer, about his injury; that he then went to Dr. S on _____ and told Dr. S what happened; that Dr. S began treating him for his shoulder pain, referred him to Dr. F for his groin injury, and took him off work; that Dr. F told him that he does not have a hernia but he does have a ruptured lower abdominal wall; and that he has not worked since _____.

Dr. S reported that on _____, claimant told him that he felt sharp pain in his shoulder when lifting a heavy box at work. Dr. S noted that shoulder x-rays were within normal limits and diagnosed claimant as having acute bursitis/tendinitis of the right shoulder, suspected mild instability of the right shoulder, and acute myofascitis of the right parascapular region. Dr. S took claimant off work and referred him to Dr. F for a groin injury. No report from Dr. F is in evidence. On August 9, 1999, Dr. S diagnosed claimant as having impingement syndrome of the right shoulder and wrote that cervical radiculitis should be ruled out. Dr. S wrote that claimant should continue off work and that when he initially saw claimant on _____, claimant said that the injury took place on

_____. Dr. S has prescribed medications, exercises, and diagnostic testing for claimant's shoulder.

CM, a staffing supervisor for employer, testified that MG called her at lunchtime on _____, and told her that claimant had left and that company would no longer need claimant because claimant was not working fast enough. CM said she tried to contact claimant at his home but got no response. CM said that MG did not mention any injury. KW testified that claimant called her the morning of _____, and wanted to know why his job had ended at company and when she told claimant that it was because he was working too slow, claimant told her he was doing a good job and that he had injured his shoulder and groin. On _____, KW filled out a notice of loss form for claimant's claimed work-related injury, stating a date of injury of _____. The Employer's First Report of Injury or Illness (TWCC-1) states a date of injury of _____. Claimant's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) states a date of injury of _____.

MG stated in a written statement that during the few days that claimant worked at company, company was not pleased with claimant's productivity; that he called employer on _____, to request that claimant be replaced; and that at no time prior to claimant's being replaced did claimant tell him that he had been injured while working at company's warehouse. LP stated in a written statement that during the few days claimant worked at company, company was not happy with his productivity and requested that employer replace him. LP said that claimant never told him he had been injured working in the warehouse. RM stated in a written statement that he is an order processor for company; that he was not claimant's supervisor; and that during the time claimant worked at company's warehouse, claimant never told him that he had been injured. Claimant said he did not know if RR, the supervisor he said he told about his injury prior to going to lunch on _____, is RM.

As noted, the issues at the CCH were whether claimant sustained a compensable injury on _____, and whether claimant sustained disability from a compensable injury on _____. Claimant had the burden to prove that he was injured in the course and scope of his employment and that he has had disability. Claimant appeals the hearing officer's findings that claimant did not injure his right shoulder while performing his job as an order puller on or about _____, and that any inability of claimant to obtain and retain employment at wages equivalent to his preinjury wage is due to something other than an alleged compensable injury sustained on or about _____. Claimant also appeals the hearing officer's conclusions that claimant did not sustain a compensable injury on or about _____, and that claimant did not sustain disability from an alleged compensable injury sustained on or about _____.

Claimant states in his appeal that he has chosen not to pursue his groin injury as part of his workers' compensation injury but asks us to render a decision that he did sustain a compensable injury to his right shoulder and groin on _____, and that he has had disability from _____, through the present; that the injury occurred on _____,

not _____; and that the hearing officer's decision is against the great weight of the evidence. The issue was whether claimant sustained a compensable injury on _____; however, the hearing officer recognized in his decision that claimant testified that his injury occurred on _____, and stated in his discussion of the evidence that he found that claimant had not sustained his burden of proving that he sustained a compensable injury on _____. The hearing officer did not limit his decision to just _____, as is noted in his discussion of the evidence that references the date of _____, and in his finding and conclusion that references a date of on or about _____. The hearing officer's failure to find a groin injury is not reversible error in light of claimant's statement that he has chosen not to pursue his groin injury as part of his workers' compensation injury.

The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence. It is apparent from the hearing officer's decision that he did not find claimant's testimony persuasive in light of other evidence that was presented. As an appeals body, we are not fact finders and we do not normally pass upon the credibility of witnesses or substitute our own judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. 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

Thomas A. Knapp
Appeals Judge