

APPEAL NO. 000264

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 28, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, contending that he did sustain a compensable injury and had disability from July 4, 1999, through September 12, 1999. The respondent (carrier) replies that the claimant's pain is from a 1997 injury, and that the hearing officer's decision and order should be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained a prior compensable injury to his low back on _____, sought medical treatment one time, and did not lose any time from work. The claimant testified that on _____, while working as an assistant manager for a restaurant, he was organizing a walk-in refrigerator and felt pain in his low back. The claimant sought medical treatment with Dr. J on _____. According to the claimant, he initially thought his pain was related to the _____, injury, and he told Dr. J that it was related to the _____, injury. The claimant said that he did not realize he sustained a new injury until he discussed it with Dr. J after several visits and learned that a back injury could be sustained as a result of repetitive lifting. The claimant testified that he experienced intermittent back pain since the _____, injury, but his back pain increased in May 1999, when his duties included organizing the walk-in refrigerator/freezer several times per week. According to the claimant, he continued working until (date), when his pain became severe and Dr. J took him off of work. The claimant testified that he has not been released to return to work, but he obtained a job with a different employer requiring less physical activity in September 1999.

Dr. J's initial medical report reflects a date of injury of _____, and a diagnosis of low back pain, lumbar sprain/strain, lumbar subluxation and muscle spasm. Dr. J's report of August 25, 1999, reflects a date of injury of _____. Dr. J, in a letter to the Commission on November 29, 1999, states that the claimant sustained a new injury on _____, and that the date of injury on his reports changed after the claimant went to a Commission office, was informed of his rights, and advised Dr. J that he was going to pursue his new injury. The claimant's recorded statement taken on July 14, 1999, does not provide a history of injury on _____.

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). He resolved contradictions in the evidence against the claimant and concluded that claimant did not sustain an injury in the course and scope of employment on _____. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge