APPEAL NO. 000293

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 January 7, 2000. 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 appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a production operator for the employer. His job was to sit and load paper reels containing parts into six machines that would assemble the parts on a motherboard. After the reel was used, the paper was collected in a tray at the bottom of each machine and the claimant was responsible for emptying the trays. The claimant testified that on _____, he bent down and lifted a tray, injuring his low back. According to the claimant, he continued working and his back pain increased until he was unable to work after June 1, 1999. The claimant sought medical treatment with his family doctor, Dr. B, on June 2, 1999, and said that he told Dr. B that he was injured at work on _____. Dr. B referred the claimant to Dr. WW and the claimant had a lumbar MRI performed on June 18, 1999. Dr. WW diagnosed the claimant with degenerative disc disease, a herniated disc at L2, and degenerative arthritic spondylitic changes at multiple levels with mild retrolisthesis at L2-4. The claimant subsequently received medical treatment from Dr. JW, a chiropractor.

The claimant testified that he sustained a prior compensable back injury in _____ while living in the (State). The medical records indicate that the claimant sustained a herniated disc at L4-5, degenerative spinal stenosis at L4-5, and a vacuum phenomenon at L3-4. The claimant testified that he had spinal surgery in 1985 and made a full recovery. According to the claimant, he was able to work, cycle, and jog prior to _____. The claimant testified that on June 2, 1999, he left a message for his supervisor, Mr. D, stating that he had been injured at work; that the doctor was recommending surgery; and that he could not work. The claimant said that he also called Mr. P, the branch manager for the employer, on June 4, 1999, and told him that he had been injured at work. According to the claimant, he asked Mr. P about insurance and Mr. P refused to give him any information.

The carrier presented a recorded statement from Mr. D. Mr. D states that the claimant left him a message on June 2, 1999, which was hard to understand, but that the claimant did not tell him that he had injured his back. Mr. P testified that he spoke with the

claimant on June 14, 1999, not June 4, 1999, but the claimant did not indicate that he had sustained a work-related injury. Mr. P said that the claimant called him on June 14, 1999, asking about holiday pay, and told him that he was having back problems from a prior back injury. After their conversation on June 14, 1999, the claimant faxed an ADA form to Mr. P which states his disability is "lower back problems." According to Mr. P, he first received knowledge that the claimant was claiming a work-related injury on June 21, 1999, when he received a call from Dr. JW's office.

Dr. JW opines that the claimant injured his low back on _____, "while lifting heavy circuit board panels from underneath his work station." Dr. B wrote a letter on December 22, 1999, which states:

> I originally saw [claimant] on May 4, 1999 for a physical exam. He did not complain of any back pain at that time. On June 2, 1999, I saw him with a two-week history of back pain. He stated it started out rather slowly but was increasing. He did not tell me the cause of the pain at that time. We did a CT scan on June 18, 1999 that showed old surgical changes and left lateral disc herniation at L2. I next saw [claimant] on June 25, 1999 and at that time he told me that he felt the pain was due to an injury at work and wanted this to be on workers compensation.

The carrier had the claimant's records reviewed by Dr. R. Dr. R states that the claimant's 1985 CT scan remained unchanged from the MRI of 1999; however, it did not include the L1-3 levels. Dr. R opined that "[i]f he has new symptoms relative to loss of hip flexion power associated with L2 root impingement, then this is a new injury superimposed on a degenerative disc and most likely this fragment will need to be removed."

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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The history of an injury as reported by a claimant and contained in the history portion of medical reports does not necessarily compel a finding that an injury occurred as recited in the history. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

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 although the claimant has a herniated disc, the claimant did not prove that his herniated disc is work related. The hearing officer did not find Dr. JW's opinion persuasive, considering the absence of any evidence that the claimant worked with

heavy circuit board panels. 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:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge