

APPEAL NO. 000325

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 24, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on _____ (all dates are 1999); and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable bilateral inguinal hernia injury on _____; and that he had disability from August 13th, through September 14th. The appellant (carrier) appeals, contending that only the right-sided hernia occurred in the course and scope of employment. The claimant responds, urging affirmance. The hearing officer's decision on disability has not been appealed and has become final. See Section 410.169.

DECISION

Affirmed.

Claimant was employed in the employer's shipping department. Claimant testified that at about 10:30 a.m. on Wednesday, _____, as he was putting a box of plastic parts in place, he felt a pulled muscle in his groin. Claimant said that he thought it would go away and continued to work until noon, went to lunch and upon returning from lunch was terminated. Claimant said that he told his wife about the strained muscle that evening, that he told a friend (apparently a bartender) about the pulled muscle on Thursday, (subsequent date) and that he saw a coworker and her husband at a gun show over the weekend (subsequent dates) and told them about his strained groin. Also over the weekend, claimant said that he fired a new 11-pound pistol several times but was unable to continue because of groin pain. On Monday, (subsequent date), he returned to the employer's premises, by appointment, to get his check and reported the strained groin muscle to Ms. W, employer's human resources manager. At the CCH, carrier contested that the injury was compensable and that claimant's claim was either a spite claim or had been sustained over the weekend firing the new pistol. On appeal, carrier appears to be accepting a right inguinal hernia but not a left inguinal hernia because claimant was initially complaining only of a right-sided groin pull.

After claimant reported his injury, Ms. W referred claimant to (clinic) where he was seen by Mr. D, a physician's assistant. A report dated "(subsequent date)" (sic, possibly (subsequent date)) notes that claimant "presented here on (subsequent date) with complaints of right groin pain" and that "upon physical examination right exquisitely painful inguinal hernia was discovered." Mr. D was of the opinion that "this hernia was very acute, less than 5 days old." Claimant subsequently saw his own doctor, Dr. H, who referred claimant to Dr. B for surgery. Claimant apparently had surgery on (subsequent date), which was paid for by a group health carrier, which has a subrogation claim.

In a report dated September 14th, Dr. B wrote:

[Claimant] had repair of bilateral inguinal hernias four weeks ago. In his opinion, these hernias occurred, or at least became symptomatic, after a heavy lifting episode at work. He was unaware of hernias or symptoms prior to that event. It is possible that the lifting that he did at work could contribute to the development of the hernias.

In a report dated November 1st, Dr. H wrote:

Neither I [Dr. H] or my associates have ever treated [claimant] for a bilateral hernia or any other type of hernia till after the date of _____. On July 27, 1999 [claimant] was referred to [Dr. B].

Based on claimant's testimony, the hearing officer found that claimant "initially felt pain on the right side, but there was also swelling on the left side." (Finding of Fact No. 7.) Carrier contends that there is insufficient evidence to support a finding that the injury included a left inguinal hernia because claimant "only complained of pain in his right groin area" and "the first medical reports documented a right-sided hernia." Claimant testified on cross-examination:

Q. When did you experience pain in your left groin area?

A. Actually I never did.

Q. But the doctor told you you had a bilateral hernia, correct?

A. Oh, he showed me where it popped up when he was giving me my exam.

Q. So you believe you had a bilateral hernia-

A. Yes, sir.

Q. -even though you never experienced any pain on the left side?

A. All my pain, most of the pain I was feeling was on my right.

Based on that testimony and the inferences the hearing officer could draw from that and other testimony, we hold that the hearing officer's decision is supported by sufficient evidence.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this

case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge