

APPEAL NO. 000351

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 13, 1999. In Texas Workers' Compensation Commission Appeal No. 992007, decided October 22, 1999, the Appeals Panel reversed the decision of the hearing officer and remanded the issue of whether the appellant (claimant) sustained a compensable injury on _____, and whether the claimant had disability, with instructions to admit, review and consider Claimant's Exhibit No. 4. The hearing officer did not convene another hearing and rendered another decision on January 25, 2000. He determined that the claimant did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight of the evidence and should be reversed. The respondent (carrier) replies that the hearing officer's findings and conclusions are supported by the evidence, and that the decision should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, while performing concrete work, he was carrying a form weighing more than 500 pounds with two coworkers when one of the coworkers let go, causing him to injure his low back; that he continued working that day; that the next day he only worked for three hours because his foot went numb and he fell; and that he told his supervisor, who sent him to Dr. G. According to the claimant, Dr. G told him that he had injured two discs and a ligament and took him off work. In May 1999, the claimant sought treatment with a doctor closer to his residence, Dr. S. The claimant testified that he has been unable to work since April 14, 1999. The claimant presented witness statements from coworkers (Claimant's Exhibit No. 4) which state that they witnessed the claimant's injury on _____.

The carrier argued that the claimant did not sustain an injury on _____, or _____, and presented the testimony of Mr. B to support its position. Mr. B, the personnel and safety director, testified that he investigated the claim and no injury was reported on _____. Mr. B said that he went to the job site, spoke with the crew, and no one saw anything. Pursuant to an Employer's First Report of Injury or Illness (TWCC-1) on _____, the claimant reported an injury from falling on a slab on _____. Dr. G's records indicate that on _____, the claimant gave a history of "severe acute low back pain for two weeks now after lifting on the job on _____." Dr. S's report for a date of visit of May 7, 1999, is the first medical record which indicates an _____, date of injury.

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). The hearing officer considered Claimant's Exhibit No. 4 and gave it minimal weight. The hearing officer found the claimant inconsistent in his testimony and chronology of events, and was not persuaded that the claimant sustained a compensable injury 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:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge