

APPEAL NO. 000403

On December 7, 1999, a contested case hearing (CCH) was held, with the record closing on January 17, 2000. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, and that claimant gave timely notice of injury to his employer. The hearing officer ordered that respondent (carrier) is not liable for benefits on this claim (the claim of an \_\_\_\_\_, injury). Claimant requests that the hearing officer's decision that he did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, be reversed and that a decision be rendered in his favor on that issue. Carrier requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision on the issue of timely notice of injury, which was based on a stipulation of the parties.

DECISION

Affirmed.

Claimant testified that he sustained a work-related injury to his lower back and right shoulder on \_\_\_\_\_, while working for (employer) and that that injury did not involve his upper back or neck. Dr. H, the designated doctor for the \_\_\_\_\_, injury, reported in April 1997 that claimant was lifting parts at work on \_\_\_\_\_, when he felt a pop in his right shoulder and then experienced lower back pain; that claimant had lumbar spine surgery at L4-5 and L5-S1 in July 1996; and that, with regard to the \_\_\_\_\_, injury, claimant reached maximum medical improvement on January 6, 1997, with a 16% impairment rating. Dr. H assigned impairment for claimant's lumbar spine and right shoulder. Dr. H noted that a cervical MRI may be beneficial.

Claimant said that he treated with several doctors for his \_\_\_\_\_, injury before beginning treatment with Dr. R, D.C. for that injury in September 1998. Dr. R reported in his initial report of September 17, 1998, that claimant was picking up parts at work on \_\_\_\_\_, when he heard his back pop and that claimant complained of pain in his neck, mid-back, lower back, buttocks, and hips. Dr. R diagnosed claimant as having cervical, thoracic, and lumbar subluxations and a sacroiliac sprain/strain and wrote that claimant's symptoms were the result of the work-related accident described in his report, that being the accident of \_\_\_\_\_. Dr. R prescribed chiropractic treatment. Dr. R's progress notes for claimant for 20 visits from September 18, 1998, to November 3, 1998, note that claimant complained of pain in his neck, mid-back, lumbar region, buttocks, and hips and that Dr. R provided chiropractic treatments to claimant's cervical, thoracic, and lumbar regions.

Apparently claimant was off work for his \_\_\_\_\_, injury until he returned to work for employer in February 1999. Dr. R provided written authorizations for claimant's

absence from work on July 13, 1999, and August 3, 1999, noting that the absences on those days were to avoid aggravation of claimant's condition. Claimant testified that he continued to receive treatment from Dr. R for his \_\_\_\_\_, injury up until his work injury of \_\_\_\_\_. He said that he missed some time from work from February 1999 to August 5, 1999, because of sickness or appointments.

Claimant testified that on \_\_\_\_\_, he was at work for employer as a warehouse clerk when he lifted 35- to 45-pound cylinder packs from the floor to chest level to stock them and felt a pop in his neck and a pull in his entire back. He said that he continued to work that day, that he told a coworker that day about his back pain, and that he went to Dr. R after work that day and told Dr. R about his injury at work that day. He said he had pain in his neck and whole back from the \_\_\_\_\_, injury. Claimant said that from August 5 to September 1, 1999, he missed two or three days of work because of his \_\_\_\_\_, injury; that Dr. R took him off work on September 2, 1999; that he has not worked since September 2, 1999; that he underwent three weeks of physical therapy; and that he had started a work hardening program at the time of the CCH. He said carrier has not approved MRIs of his neck and upper back.

Claimant said that he told his supervisor, KR, on August 9, 1999, that he felt a pull in his back on \_\_\_\_\_, when he was putting away parts and that he did not tell KR that his pain was the same pain as his old injury. KR testified that when he, KR, returned from vacation on August 9, 1999, claimant told him he was feeling back pain again and that he, KR, understood from claimant that the back pain was from the \_\_\_\_\_ injury. KR said that on September 1, 1999, he first became aware that claimant was claiming a new injury and that from February 1999 to August 5, 1999, claimant had missed work once or twice a month because of sickness or back pain.

Dr. R provided written authorizations for claimant's absence from work on August 20, 27, and 31, 1999, for physical therapy. In a report dated September 2, 1999, Dr. R wrote that claimant was in his office that day for evaluation and treatment of injuries he reportedly sustained while at work on \_\_\_\_\_, and that claimant's injury occurred on that day when lifting an object from ground level that weighed 40 to 60 pounds and that claimant said he had a sharp pain, a dull pain, and a popping feeling. Dr. R noted complaints of pain in the neck, mid-back, and lumbar region and diagnosed claimant as having headaches, cervical and thoracic subluxations, thoracic sprain/strain, and lumbar radiculitis. Dr. R wrote that claimant's symptoms appear to be the result of the work-related accident described in his report, that being the claimed injury of \_\_\_\_\_, and prescribed chiropractic treatment. Dr. R also wrote on September 2, 1999, that claimant should be excused from work as of that date due to a cervical, thoracic, and lumbar injury, and he issued another off-work slip on September 1, 1999. Dr. RA reported that x-rays done on September 2, 1999, showed degenerative joint disease, cervical muscle spasm, abnormal straightening of the cervical spine, hypomobility at C2-7, and ligamentous laxity in the cervical and lumbar spine. A functional capacity evaluation report of September 8, 1999, noted that claimant was functioning at a lower medium/medium physical demand work level and that he is not currently physically able to perform his job without restrictions.

In a report of December 6, 1999, that states a date of injury of \_\_\_\_\_, Dr. R reported that claimant is experiencing headaches and pain in his low back, mid-back, and neck and diagnosed claimant as having cervical and lumbar subluxations.

Claimant had the burden to prove that he was injured in the course and scope of his employment. The hearing officer made findings of fact and concluded that claimant did not sustain an injury in the course and scope of his employment on \_\_\_\_\_. Whether claimant's symptoms are a result of his prior injury of \_\_\_\_\_ or the result of a new injury sustained at work on \_\_\_\_\_, including a new injury by way of aggravation of a preexisting condition or injury, was a fact question for the hearing officer to determine from the evidence presented. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. 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). Although the hearing officer did not make a decision on the disputed issue of disability, without a compensable injury, claimant would not have disability as defined by Section 401.011(16). Thus, since we are affirming the hearing officer's decision that claimant did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, claimant would not have disability, as defined by Section 401.011(16), as a result of his claimed work-related injury of \_\_\_\_\_.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge