

APPEAL NO. 000492

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 February 7, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment on _____, and that the claimant has not had disability because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was assigned by the temporary agency where he was an employee to work at a bakery. _____ was the first day the claimant had been assigned to the bakery but he had worked for the employer off and on for about one year and one-half. He stated that he was lifting trays of bread dough to put them in a rack and he felt a "pop" in his back and pain "like a bunch of needles" in his neck and upper back. He testified that his hands also became numb and weak and he began to drop the trays. The claimant stated that he reported his injury to his supervisor at the bakery immediately but he did not report it to the employer because the office was closed. He stated that he called the employer on the Monday following his injury, and reported his injury to "C" and asked to see a doctor. He testified that Mrs. C had her supervisor, "Mr. Y," call him back and that in that conversation, Yvonne told him that she did not believe he had been injured at work, that he could not see a doctor, and that she terminated his employment.

The claimant testified that after the employer would not let him see a doctor, he sought treatment through the (hospital). He was treated with physical therapy and medication. In a March 3, 1999, physical therapy report, the claimant was released as "basically pain free" and encouraged to continue with home exercises. The claimant testified that although therapy helped his pain initially, eventually it returned such that he sought medical treatment with Dr. M, a chiropractor, in August 1999. Dr. M diagnosed cervical strain/sprain and thoracic strain/sprain.

Ms. L testified that she is an office manager with the employer. She stated that all of the employees are given a pager number so that they can contact the employer at any time whether or not the office is open. Ms. L also stated that she contacted the claimant's supervisor at the bakery and that he was unaware of the claimant's having been injured on the job.

The claimant has the burden to prove that he sustained a compensable injury. That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him.

Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, questions of injury and disability can be established based on the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer need not accept the testimony of the claimant at face value; rather, it only raises an issue of fact for the hearing officer to resolve. Campos, supra; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving that he sustained a compensable injury. The hearing officer specifically noted that the claimant was not a credible witness. The hearing officer simply was not persuaded that the claimant had sustained his burden of proving that he was injured in an incident at work on _____. Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability because the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge