

APPEAL NO. 000501

On February 4, 2000, a contested case hearing (CCH) was held. 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 respondent (claimant) sustained a compensable injury on _____, and that claimant had disability from November 1, 1999, through the date of the CCH. Appellant (carrier) requests that we reverse the hearing officer=s decision and render a decision in its favor on both issues. Claimant requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

Claimant testified that he began working for (employer) as a long-haul truck driver in October 1994. Claimant said that while working for another employer in _____ he had a muscle strain in his back when he lifted a dock plate, missed half a day of work, and saw a doctor. In a report dated October 8, 1993, Dr. P diagnosed claimant as having an acute soft tissue injury to his lumbar spine of a minor nature after pulling up a dock plate on _____, and noted that he gave claimant a trigger point injection and that claimant would go to physical therapy (PT). In December 1993, Dr. P reported that, with regard to the _____, injury, claimant reached maximum medical improvement on October 12, 1993, with a zero percent impairment rating. Dr. P noted that after one day of PT, claimant=s symptoms resolved and he had returned to work. Claimant said that his strained back muscle has occurred twice since _____, but that his symptoms went away after a night=s sleep. He said that one of those episodes occurred shortly after he was hired by employer and that he went to a doctor who gave him pain pills, which he said he threw away.

Claimant testified that on _____, he and his partner, FC, were driving an 18-wheeler for employer from (City 1) to (City 2). Claimant said that he drove the first five hours from City 1 to (City 3) and that he stopped at a truck stop in City 3 to make a driver change-out, which means that he stopped to have FC take over as driver. Claimant testified that there was a crosswind when he was driving and that after stopping the truck, he opened the driver=s door and stepped out onto the running board, which he said was about three and one-half feet off the ground and that there are two steps up to the cab. He said that while on the running board, he yawned and stretched and that the wind was blowing the door up against his back. He said that when he went to step off the running board, he does not know if he slipped or misstepped or exactly what he did, but that when he realized that he was falling, he grabbed hold of a hand bar and his hand slid down that bar as he fell. Claimant indicated that he landed on his feet, but said that his legs were locked straight and that he was jarred when his feet hit the ground. Claimant said that when he landed, he experienced the worst pain in his life and that the pain was in his middle and lower back and both hips and legs. Claimant said that he screamed and FC got out of the truck and helped him walk over to the passenger side of the truck and helped him get in.

In a written statement, FC stated that on _____, he and claimant stopped in City 3 for a driver change; that claimant opened the door on the driver's side and stood on the running board; that the next thing he knew claimant was on the ground moaning; that he heard claimant hit the ground flat-footed; that he got out of the truck and went to the driver's side where he could see that claimant was in pain; that he helped claimant around to the passenger side and helped claimant get in that side of the truck; and that he went inside the truck stop to call employer and report claimant's accident. Claimant said that FC drove from City 3 to City 2.

Claimant said that on _____, he reported his injury to employer's dispatcher who referred him to Dr. H. In a written injury report dated _____, claimant wrote that, when making the driver change, he stepped out onto the running board and stretched and the wind caught the door and knocked him off to the ground. Claimant said that although that is what he wrote, he does not necessarily agree with his written statement. He said that the wind did not catch the door and knock him to the ground, although he did have his back to the door and the wind was pushing the door against his back. He said that when he went to step off the running board, he misstepped. He also said that he fell from the running board to the ground when he went to step off the running board. Claimant indicated that he thinks it was a combination of different things that caused his fall.

Claimant went to Dr. H on _____, and Dr. H noted in the history section of his report that claimant's injury occurred when he fell off the running board of the truck and landed flat-footed. Dr. H noted that x-rays of claimant's lumbar spine done on _____, showed degeneration and diagnosed claimant as having a lumbar sprain and hip and thigh sprains and strains. Dr. H wrote that claimant was returned to full duty on November 2, 1999. Dr. K reported that the x-rays done on _____, showed degenerative disc disease and that x-rays of the right hip showed no abnormality.

Claimant said that he first saw Dr. M, D.C., on November 1, 1999. Claimant said that Dr. M is his current treating doctor and that, although Dr. M did not touch him, she did talk to him and observe him. He said that Dr. M did not observe motion testing at her office a few days later and that Dr. M's assistants, and not Dr. M, perform the hands-on therapy he receives. In a report dated November 1, 1999, Dr. M wrote that claimant told her that, when making the driver change, he stepped onto the running board of the truck; that the weather was windy and the door flew into him causing him to lose his balance; and that he landed flat-footed, jarring his lower back. Claimant said that he does not necessarily agree with the history recorded in Dr. M's report. Dr. M noted that claimant told her that prior to the incident on _____, he was asymptomatic in the areas of complaint. Dr. M diagnosed claimant as having displacement of lumbar intervertebral disc, sciatica, muscle spasm, and paresthesia, and wrote that claimant's current complaints are causally related to his on-the-job accident of _____. Claimant said that Dr. M took him off work. Claimant said that, although his condition improved in late December 1999, he has still been unable to return to work because of his injury. Dr. M wrote in two reports that claimant is under her care for a work-related injury and that he needs to continue to be off work.

Dr. MA reported that an MRI of claimant's lumbar spine done on November 2, 1999, showed a very large disc herniation at L2-3 which causes severe spinal canal stenosis, a disc bulge at L1-2, a disc bulge at L4-5, and disc desiccation and degeneration at L1-2 and L2-3. Dr. M referred claimant to Dr. W for a neurological evaluation and Dr. W wrote on November 3, 1999, that claimant should be treated conservatively, but that should he not improve or get worse, then he would require further testing, with the possibility of surgery. Dr. S reviewed the MRI films of November 2, 1999, and concluded that claimant has multiple disc degeneration and protrusions and multilevel congenital and acquired stenosis, especially at the upper lumbar level and most notably at L2-3, with large left extrusion and cauda equina compression. In response to a carrier inquiry, Dr. SI referred to conditions stated in Dr. S's report and stated that those are conditions of a long-standing ordinary disease of life and are congenital conditions which were preexisting and noted that Dr. M did not include all of the degenerative or congenital conditions in her diagnoses. Dr. SI wrote that carrier was justified in denying the claim and that it should obtain claimant's medical history, but that claimant should seek competent orthopedic surgery consultation, even if under his group insurance. The only medical report in evidence after the December 1993 report of Dr. P and prior to the _____, report of Dr. H, is a report of August 2, 1999, wherein claimant sought medical advice regarding his desire to quit smoking.

Carrier contended that claimant has preexisting degenerative disc disease and did not sustain an injury, that it is not liable for compensation under Section 406.032(1)(E) because the injury arose out of an act of God, and that claimant has not had disability. There was conflicting evidence as to how the accident occurred but as the trier of fact the hearing officer resolves the 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. The hearing officer states in her discussion of the evidence that based on careful consideration of all the evidence and testimony, she concluded that claimant sustained his burden of proving by a preponderance of the evidence that he injured his low back while working for employer on _____, and that claimant's injury was not caused by an act of God. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer found that on _____, claimant sustained an injury to his back when he fell off the running board of his truck while working for employer and that the inability of claimant to obtain and retain employment at wages equivalent to the preinjury wage from November 1, 1999, through the date of the CCH on February 4, 2000, was the result of the injury claimant sustained while working for employer. The hearing officer concluded that on _____, claimant sustained a compensable injury and that claimant had disability from November 1, 1999, through the date of the CCH on February 4, 2000. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. 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 findings, conclusions, and decision are supported by sufficient evidence and that they are 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).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge