

## APPEAL NO. 000526

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on February 16, 2000, with the hearing officer addressing the issues under two separate dockets. The issues for Docket No. \_\_\_\_\_ were whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; and whether the claimant had resulting disability. The issues for Docket No. \_\_\_\_\_ were whether the claimant sustained a second compensable injury on \_\_\_\_\_; and whether the claimant had resulting disability. The hearing officer determined that the claimant did not sustain any compensable injury on \_\_\_\_\_, and had no disability. The claimant appeals, asserting that these determinations were against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant testified that on the morning of \_\_\_\_\_, he was assisting in moving metal beams on a cart. When he reached up to push one back into position, another beam was placed on the cart trapping his right arm. He said he screamed very loudly "my arm, my arm!" The other beam was then lifted out of the way and his arm was released. He said the incident was witnessed by three coworkers, Mr. J, Mr. T, and Mr. G. He continued working. About 15 minutes later, he said, he was helping Mr. G carry a beam when the beam struck a door frame causing him to twist his entire back. He said he notified his supervisor, Mr. M, about these incidents by the end of the workday and asked Mr. M to fill out a report, but Mr. M declined because, according to the claimant, he, the claimant, continued working. The claimant worked the next day and was told he would be laid off at the end of the day. He saw Dr. B, D.C., on September 15, 1999, and was diagnosed with cervical, thoracic, and lumbar strain, cervicobrachial syndrome, and radiculitis. On October 20, 1999, he saw Dr. BH, who diagnosed a right shoulder separation, lumbar radiculopathy, thoracic somatic dysfunction, and muscle spasms. The claimant also said he asked his coworkers if they would testify on his behalf, but they declined.

Mr. G testified that he was asked by the claimant about two months after the incident to testify for him, but declined because he did not know him very well. He said that the claimant told him when they were loading beams that he hurt himself, but did not say how. Mr. G said he told claimant to report it and they both went back to work. He said he heard nothing more of it until the request to be a witness. He said he did not see the claimant's arm being pinned between beams and did not hear the claimant cry out that his arm was caught. Mr. M testified that the claimant told him at the end of the day on \_\_\_\_\_, that his hand was hurting while lifting a beam, but was not sure he was injured. He said the claimant never mentioned back or shoulder pain and since he, the claimant, was not sure he was injured, Mr. M did not complete a report. He said the claimant again asked for a report the following Thursday, but Mr. M again

declined because he spoke with several coworkers and all said the claimant was working "just fine." Then, he said, the claimant asked him to prepare a report as a favor to him. Mr. A, an upper-level supervisor, testified that the claimant was laid off, but that prior to the layoff he was told by Mr. M that the claimant said he injured his wrist while working. He said he also observed the claimant working normally on \_\_\_\_\_.

The claimant had the burden of proving he sustained a compensable injury as claimed. 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 and could be proved in this case by the claimant's testimony alone if found credible. In this case, while there is evidence of a spinal, shoulder and upper extremity injury, the hearing officer did not find the claimant credible in his assertion of how he sustained these injuries. In doing so, she pointed to conflicts in the evidence about whether he was actually doing what he said he was when injured and whether he spontaneously cried out at the time of the claimed arm injury. In his appeal, the claimant refers to medical evidence of an injury and contends that he was credible and should not be penalized for continuing to work after he was injured. We observe that the recitation in a medical report of the history of an injury is not evidence in itself that the injury occurred as stated, but the credibility of this evidence depends on the credibility of the claimant who provided the information to the doctor for inclusion in the report. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the 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, but find the evidence sufficient to support the determination that the claimant failed to prove that he sustained either claimed injury on \_\_\_\_\_, while in the course and scope of his employment.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Thomas A. Knapp  
Appeals Judge

Judy L. Stephens  
Appeals Judge