

## APPEAL NO. 000528

On February 9, 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 (appellant) claimant did not sustain a compensable injury on \_\_\_\_\_; that claimant has not had disability; and that claimant was not in a state of intoxication at the time of the claimed injury. Claimant requests that the hearing officer=s decision that he did not sustain a compensable injury and that he has not had disability be reversed and that a decision be rendered in his favor on those issues. Respondent (carrier) requests that the hearing officer=s decision on the issues appealed by claimant be affirmed. There is no appeal of the hearing officer=s decision on the intoxication issue.

### DECISION

Affirmed.

Claimant testified that he had worked for employer for a year prior to his claimed injury of \_\_\_\_\_. Claimant said that on \_\_\_\_\_, he was performing his work duties pulling a stack of crates on a pallet jack when the front wheels of the pallet jack got caught in a crack in the concrete floor and spun to the left, which twisted him around and caused him to fall to the floor on his left side, resulting in pain in his lower back. Claimant said he was alone when injured. Claimant said he reported his injury to his team leader and to his supervisor on \_\_\_\_\_ and that he was sent to a hospital that day. Hospital records of \_\_\_\_\_ record complaints of acute back pain that started at work, note that lumbar x-rays were normal, and state a diagnosis of acute myofascial lumbar strain. Claimant said that the next day he had pain in his lower back that went down his legs and that he went to a medical clinic. Claimant said that he also had shoulder and neck pain. On August 10, 1999, Dr. K noted in the history section of his report that claimant twisted his back and neck when pulling the pallet of crates on \_\_\_\_\_ and that the pain radiated down his legs. Dr. K diagnosed lumbosacral, sacroiliac, thoracic, and cervical strains and began conservative treatment. Dr. O saw claimant on September 16, 1999, for complaints of pain in the neck, mid back, and low back and noted that x-rays of the cervical spine showed degenerative disc disease, x-rays of the thoracic spine were normal, and x-rays of the lumbar spine showed degenerative disc disease. Dr. O stated an impression of neck sprain, thoracic sprain, and lumbar discogenic syndrome. A radiologist reported that a lumbar MRI done on September 20, 1999, showed degenerative disc disease at L4-5 and L5-S1 and disc herniations at those levels without stenosis or neural impingement. Claimant changed treating doctors to Dr. F, D.C., who noted in the history section of his report of November 11, 1999, that claimant twisted his back and neck while pulling on a pallet jack. Dr. F issued a series of work-excuse slips. A radiologist reported that a lumbar MRI done in January 2000 showed mild disc spondylosis with annular fissuring at L4-5 and mild disc spondylosis at L5-S1. The radiologist also reported that a cervical MRI done in January 2000 showed generalized hypolordosis and disc spondylosis at three levels. Claimant said that he has not worked since \_\_\_\_\_; that he continues to

have pain in his neck and back; and that he has received therapy for his neck and back. Claimant said that he was terminated from employment because of a positive drug screen done on \_\_\_\_\_.

Claimant said that he had a sprained back muscle in February 1999, was given therapy, and returned to work. Dr. O noted that claimant had been released to return to work in March 1999. Employer gave claimant a written warning in May 1999 for leaving work without notifying his supervisor. Employer gave claimant a written warning in June 1999 for an unexcused absence. On July 27, 1999, employer suspended claimant for three days beginning on July 28, 1999, for leaving work without notifying his supervisor. Claimant returned to work on Monday, August 2, 1999. Claimant said he had no animosity about his suspension.

Claimant had the burden to prove that he was injured in the course and scope of his employment. The hearing officer notes in her decision that she did not find claimant nor the reports of the medical clinic and Dr. K to be credible regarding his claimed injury. Claimant makes unsubstantiated allegations of prejudice. The hearing officer found that claimant did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, and concluded that claimant did not sustain a compensable injury on \_\_\_\_\_. The hearing officer also found and concluded that claimant did not have disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). Whether claimant was injured at work as claimed presented 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. 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. 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Judy L. Stephens  
Appeals Judge