APPEAL NO. 000536

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was scheduled for December 27, 1999, and continued to February 7, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant=s failure to timely notify his employer of the injury; and that the claimant did not have disability. The claimant appeals, asserting that the hearing officer's decision is contrary to the "overwhelming weight of the evidence" and requesting that we reverse the hearing officer=s decision and render a decision in his favor. The carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a security officer by the employer hotel. It appears undisputed that claimant had had several hernia operations in the past. Claimant testified that on _____ (all dates are 1999 unless otherwise noted), as he picked up some luggage for a guest, he felt a "pinch" in his low back and abdomen. Claimant said that he reported the injury to his supervisor, Mr. H, on July 4th, 10th and 20th. Mr. H testified that he was not at work on July 4th and that claimant had not reported an injury to him on that day or any other day. Claimant was terminated on July 20th for an incident unrelated to the alleged injury. Claimant testified that after July 4th, his pain became progressively worse (claimant is vague how that was so and whether it was his back or abdomen or both).

Claimant first sought medical treatment with Dr. A at a clinic on August 18th, complaining of lower left abdominal pain and stating that "he picked luggage and felt pinched in lower back area at work." Dr. A referred claimant to Dr. E for evaluation for a hernia repair. Although not entirely clear, claimant apparently called the employer and/or carrier on or about August 24th or 25th, alleging a work-related injury. There was considerable testimony about how the Employer's First Report of Injury or Illness (TWCC-1) was completed, in that claimant had apparently called the carrier on or about September 9th, and a computer-generated (unsigned) TWCC-1 was completed. That document showed claimant first reported his injury on July 24th. The hearing officer made a finding that the TWCC-1 "was not completed by Employer." Claimant testified that during the period of July 20th to August 27th, claimant was looking for work and receiving unemployment benefits. In a report dated August 27th, Dr. E recited a history that claimant "felt extremely sharp pain in the left groin" while lifting on _____ and that claimant "has no other complaints except those reparable to the left groin." Dr. E diagnosed a left recurrent inguinal hernia. Dr. E performed hernia repair surgery for a recurrent left inguinal hernia on August 27th. Claimant was taken off work for six weeks on September 1st.

Claimant requested a change of treating doctors from Dr. E to Dr. F, on September 30th, and it was approved on October 12th. In an Initial Medical Report (TWCC-61) of an October 20th visit, Dr. F noted the inguinal hernia repair "appears to be healing," concentrated on the low back injury, and commented: "[Dr. E] never evaluated [claimant's] back because that was not his specialty." Dr. F took claimant off work. Progress notes indicate that claimant was in a motor vehicle accident on December 12th.

Claimant appeals the following findings, and the conclusions on which they are based, as being against the great weight and preponderance of the evidence:

FINDINGS OF FACT

23. Claimant's diagnosed injures were not sustained in the course and scope of his employment on _____.

24. Claimant did not report a work-related injury to his supervisor, [Mr. H], on July 4, 1999, July 5, 1999, or July 24, 1999.

* * * *

26. Employer first received notice that Claimant was alleging a work-related injury on August 25, 1999.

* * * *

28. Claimant did nor report a work-related injury to Employer within 30 days of the date of claimed injury.

* * * *

30. Claimant's inability to obtain and retain employment from July 20, 1999 to August 27, 1999 was not due to any injuries he sustained.

31. Claimant's inability to obtain and retain employment from October 8, 1999, through the date of the CCH was not due to any compensable injuries.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the

weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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). Much of the evidence was in conflict or was based entirely on claimant's testimony. Claimant's testimony was contradicted by Mr. H and the hearing officer apparently was not persuaded by claimant's testimony.

In that we are affirming the hearing officer's decision that claimant did not sustain a compensable injury, claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge