

APPEAL NO. 000544

On February 15, 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 i ssues by deciding that appellatant (claimant) did not sustain a compensable injury on _____, and that claimant has not had disability. Claimant requests that we reverse the hearing officer=s decision and that we render a decision in his favor. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

Claimant testified that he had a work-related back injury in 1993 and one in 1994. He said that prior to his claimed back injury of _____, he had worked for employer for over two years. Claimant said that on _____, he was performing his work duties, pulling a queen-sized box spring off of a six-foot high shelf, when he felt back pain that went away and then felt groin pain. He said that he told his supervisor, CC, that he had groin pain and had to see a doctor. Claimant said that he went to a hospital the evening of _____ and was checked for a hernia. He said that the doctor at the hospital told him to see another doctor for his back because his back was causing his groin pain and that he was taken off work for three to four days. Claimant said he worked on Tuesday, March 21st, and had back pain and on that day gave a note from the hospital to CC. That note was not in evidence. Claimant went to (F Clinic) on September 21, 1999, where he was seen by Dr. G, and Dr. G reported that claimant told her that he was lifting a queen-size box spring at work when he felt low back and groin pain and his left ankle buckled. Dr. G noted that lumbar x-rays showed a mild increase of the lordotic curve and diagnosed claimant as having lumbar IVD syndrome, lumbar radiculitis, and a left ankle strain. Dr. G and Dr. F, took claimant off work. Claimant continued to treat with Dr. F. CC testified that on _____, claimant told him that he had a preexisting groin injury that he needed to take care of and that claimant did not say he was injured at work. CC said that on September 21, 1999, claimant gave him a note from the hospital that said something about time off and that later that day he learned that claimant was claiming a work-related back injury. RA, who is CC=s supervisor, testified that on September 21, 1999, claimant told him that he had an injury and had gone to a doctor and that on September 22, 1999, claimant told him that he had gone to the hospital for a preexisting condition that had to do with a draining of lesions.

Claimant had the burden to prove that he was injured in the course and scope of his employment. The hearing officer found that on _____, claimant did not injure his low back pulling a mattress off of a shelf for employer and she concluded that on _____, claimant did not sustain a compensable injury. The hearing officer also determined that claimant has not had disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). The hearing officer states in her decision that she did not find claimant=s testimony to be persuasive. The hearing officer is the judge of the

weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. As an appellate level tribunal, the Appeals Panel 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. 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:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge