

APPEAL NO. 000566

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 held on February 1, 2000. The issues at the CCH were whether the appellant/cross-respondent (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant sustained a compensable injury on _____, and had disability from July 20, 1999, through August 11, 1999. The claimant appeals, contending that he had disability from July 20, 1999, through at least November 4, 1999. The respondent/cross-appellant (carrier) replies that in the event that the Appeals Panel finds that the claimant suffered a compensable injury, the hearing officer did not err in his determination of the period of disability. The carrier appeals, urging that the hearing officer-s determinations that the claimant sustained a compensable injury and had disability are against the great weight and preponderance of the evidence and should be reversed. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant worked on a production line making insulated panels, a process involving shooting liquid foam into the panels and then moving the panels to sawhorses to be cleaned. The claimant testified that on _____, he was in the process of removing metal Aexcursions@(bars) off of the panels by himself and one of the excursions fell and hit him on his left knee. The claimant said that he felt pain in his left knee and saw swelling, but did not believe that he was injured. The claimant completed his shift and did not report the injury. The claimant testified that later that evening, he experienced sharp left knee pain and his left knee gave out on him; he then sought emergency medical treatment.

The emergency room (ER) medical records reflect that the claimant said that he was at work, unstrapping a panel and it hit him in the knee, and also that he bumped into a machine at work. The claimant was diagnosed with left knee pain and possible fracture, given a knee immobilizer and crutches, and instructed not to work until he sought follow- up care with an orthopedic surgeon. The claimant testified that on July 20, 1999, he went to work; reported the injury to Mr. A, the plant manager; gave Mr. A the ER records; and Mr. A told him that he would have to see the company doctor, Dr. W. Dr. W examined the claimant on July 20, 1999; prescribed medication; and took the claimant off work pending an examination by an orthopedic surgeon.

The claimant testified that he was told by the carrier-s adjuster that he should file his medical treatment under group health insurance, so he sought medical treatment with Dr. Ron July 30, 1999. An MRI performed on August 4, 1999, indicated no left knee abnormality. According to the claimant, Dr. R released him to return to work and he returned to work performing his regular duties until he was terminated from employment. According to Mr. A,

the claimant returned to regular work duties on August 12, 1999, and worked until he was terminated on August 27, 1999, for absenteeism. On September 10, 1999, the Texas Workers' Compensation Commission approved the claimant's request to change treating doctors to Dr. C. Dr. C diagnosed the claimant with a left knee sprain/strain and treated the claimant until November 4, 1999, when he gave the claimant a light-duty work release. The claimant testified that around November 4, 1999, he began working a light-duty job for another employer 20 hours per week until he was laid off on December 24, 1999.

The carrier presented the testimony and statements of several of the claimant's coworkers to support its position that no injury occurred. The carrier asserts that had an injury occurred as alleged, the claimant's coworkers would have heard and witnessed the incident. The carrier also asserts that the claimant has not proven an injury because he has no objective or diagnostic medical documentation that establishes any damage or harm to the physical structure of his body.

The claimant had the burden to prove that he injured himself as claimed on _____. 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. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. 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). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, there was considerable dispute and contradiction regarding the mechanism of injury and whether it would have been witnessed and heard by the claimant's coworkers. The hearing officer resolved contradictions in the evidence for the claimant and concluded that the claimant did meet his burden of proving he sustained a compensable injury. The hearing officer found the claimant's testimony credible, despite inconsistencies in the history of injury. Although diagnostic testing did not reveal an injury, Dr. C diagnosed the claimant with a left knee sprain/strain. We have held that a strain can constitute an injury under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 951547, decided October 30, 1995. We find there was sufficient evidence to support the determination of the hearing officer that the claimant did sustain a compensable injury on _____.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. Section 401.011(16). Whether disability exists is a

question of fact for the hearing officer to decide and can be established by the testimony of the claimant if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Termination for cause does not necessarily preclude disability, but may be considered by the hearing officer in determining why a claimant is unable to earn the preinjury wage. See Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991. Thus, disability can continue after termination if a cause of the inability to earn the preinjury wage after termination was the compensable injury. Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 1993.

The claimant appeals the hearing officer's finding of disability from July 20, 1999, through August 11, 1999, asserting that he had disability at least until November 4, 1999. The claimant returned to work on August 11, 1999, and testified that he was able to perform his job until he was terminated from employment on August 27, 1999. Although the claimant's appeal states otherwise, there was no evidence presented to indicate that the claimant returned to work using crutches and a knee immobilizer. Dr. C's records do not indicate that he took the claimant off work on August 31, 1999, and there was no testimony indicating that Dr. C took the claimant off work on August 31, 1999, or that the claimant was thereafter unable to work due to his left knee injury. The hearing officer did not find disability after the claimant's termination from employment based on the claimant's testimony that he would have continued working but for his termination. We find the evidence sufficient to support the hearing officer's determination that the claimant had disability from July 20, 1999, through August 11, 1999, as a result of the injury sustained on _____.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge