

APPEAL NO. 000596

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2000. The hearing officer determined that (appellant) claimant did not sustain a compensable injury including a compensable lower back injury in the course and scope of employment with employer on _____. He also determined that claimant did not sustain disability beginning on _____, and continuing through the hearing on February 28, 2000 or any other time period, because claimant did not sustain a compensable injury on _____. Claimant appeals, contending that the hearing officer-s determinations are against the great weight and preponderance of the evidence. Respondent (carrier) responds that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable back injury at work on _____, and that he did not have disability. Claimant asserts that: (1) claimant-s testimony shows that he sustained a back injury; (2) the medical evidence shows claimant had a back injury, that he has been in pain, and that he has never been able to return to work; (3) claimant was not diagnosed with a herniated disk until after the _____, injury date; and (4) the records of Dr. S show that claimant-s medical treatment for his back became Amore constant with a herniated disk for the first time in his medical history.@

The hearing officer summarized the evidence in his decision. Briefly, claimant testified that he sustained a back injury at work at 8:15 a.m. on _____, when he was stepping from a platform to a scaffold. Claimant said he continued to work, that he completed the insulation work, that he asked to go home to get his back pain medication and did so, that he called Dr. S to obtain a renewal of his prescription, and that after he returned to work later that day, his back locked up and he could no longer continue to work. Claimant said he had been treated for back problems in the past, but that they were not as severe as what he experienced on _____. In a February 1997 report, Dr. S noted that claimant had reported episodes of intense pain in his lower back, thigh and hip which is so intense that he cannot move. A June 1999 MRI report states that claimant has a disk protrusion at the L4-5 level that is approximately 5mm and is causing moderate narrowing of the left neural foramen. The hearing officer determined that claimant suffered from a preexisting back condition and that there was no aggravation on _____.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a back injury on _____, and whether any back problems were work related, and resolved this issue against claimant. The matters claimant raises in his brief involved credibility and fact

issues, which the hearing officer resolved. The hearing officer is the sole judge of the credibility of the evidence. Regarding the notation in the decision about EMG test results, the hearing officer did note that the EMG had been previously done, so it does not appear that the hearing officer thought claimant's EMG was performed after the _____, date of injury or that he failed to consider this evidence. Regarding whether claimant or Dr. H stated that claimant's back pain is aggravated by moving and lifting, we note that it is logical to assume that the doctor's note of June 11, 1999, in this regard comes from the history given by claimant. We will not substitute our judgment for the hearing officer's in that regard because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We also affirm the disability determination. Because there was no compensable injury, there can be no disability.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge