APPEAL NO. 000635

On February 28, 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) was not injured in the course and scope of his employment and that claimant did not have disability. Claimant requests that the hearing officer=s decision be reversed and that a decision be rendered in his favor. Respondent (carrier) requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

Claimant testified that he had a work-related low back injury in _____. He treated with Dr. R and, according to a report of Dr. R, underwent a fusion from L4 to S1. Claimant had a dorsal column stimulator implanted in 1990 for radicular pain. Medical reports reflect that claimant continued to have back and leg pain, underwent epidural injections, and was diagnosed as having lumbar radicular syndrome. Claimant said that he had a work-related neck injury in _____. Dr. R wrote in 1996 that claimant complained of neck and low back pain as a result of the _____ injury and that prior to that injury claimant had undergone four spinal surgeries. In 1996, claimant was diagnosed as having failed back syndrome with persistent low back and bilateral lower extremity pain and underwent lumbar injections. Dr. R noted in July 1998 that claimant had a habitual complaint of low back pain. Claimant began working in employer=s photo lab in September 1998. In May 1999, claimant underwent surgery to have the battery in his dorsal column stimulator replaced.

Claimant testified that on _____, he was in employer=s storeroom with another employee, LM, storing 33-pound boxes of photographic paper, when LM handed him a box and, as he turned to lift the box on a shelf, the box fell out of his hands, and he felt pain in his low back and left leg. LM stated in a written statement that when he passed claimant the box, claimant grabbed it, turned to set it down, and dropped it, and that claimant told him he had back pain. LM stated that it was obvious that claimant was hurting. Claimant said that he reported his injury to his employer and that he has not worked for employer since August 15, 1999, due to his pain. Claimant went to Dr. C, his family doctor, on August 17, 1999, and Dr. C took him off work. Claimant went to Dr. R on August 24, 1999, and Dr. R noted that that was a follow-up visit and that claimant had taken some time off work and was doing better. Dr. R took claimant off work. In September 1999, Dr. R wrote that claimant has had chronic persistent pain that was aggravated by the most recent event, that claimant sustained a new injury, and that that had nothing to do with his old injury. Dr. R noted in November 1999 that claimant injured his back lifting boxes on August 7, 1999, and gave a diagnosis of lumbago. Dr. R noted that claimant should not return to work until he has a lumbar MRI. Claimant said that carrier has not authorized the MRI.

Claimant had the burden to prove that he was injured in the course and scope of his employment and that he has had disability. The hearing officer found that claimant did not sustain a new injury and concluded that claimant did not sustain an injury in the course and scope of his employment. 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 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. Texas Workers= Compensation Commission Appeal No. 950084, decided February 28, 1995. 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.

Claimant contends that the hearing officer committed reversible error in excluding the testimony of Dr. S. The hearing officer sustained carrier=s objection that claimant had not timely exchanged the identity of Dr. S as a witness. Claimant said that Dr. S is a dentist and a friend from whom he rents a room and that Dr. S would testify as to claimant=s condition after his claimed injury. We conclude that claimant has not shown reversible error in the exclusion of Dr. S=s testimony.

The hearing officer=s decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge