APPEAL NO. 000645

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 March 7, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. In his appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was a general laborer for the employer, which was in the business of installing and removing fuel tanks at gas stations. He stated that on _____, he was assigned to a crew that was installing a guardrail and that as he lifted a stainless steel guardrail, he felt pain in his neck and down his back. He testified that he told his supervisor on the job site, Mr. K, about his injury shortly after it happened. The claimant acknowledged that he finished his shift on _____ and that he worked his regular shift on _____. He testified that he was scheduled to be off work over the weekend and that he missed work on _____ and _____. He stated that he called in sick both days, speaking to Mr. R; however, the claimant admitted that he did not tell Mr. R that he had been injured at work in those conversations. On cross-examination, the claimant testified that he was fired on November 12, 1999, for attendance problems and acknowledged that he did not report his injury to Mr. R until after his employment was terminated. In addition, the claimant testified that he did not seek medical treatment for his injuries until November 17, 1999.

Mr. R, vice president of operations for the employer, testified that he first learned that the claimant was alleging a work-related injury on November 15, 1999, three days after his employment was terminated. Mr. R stated that he conducted an investigation of the alleged injury and that neither Mr. K, nor any of the claimant's coworkers on _____, could verify that the claimant had been injured lifting the guardrail. In addition, Mr. R stated that Mr. K denied that the claimant reported an injury to him on _____. Finally, Mr. R testified that he completed the claimant's termination papers but that Ms. H, vice president of administration, gave the papers to the claimant on November 12th and that the claimant did not mention an injury to Ms. H at the time he was fired.

The claimant first sought medical treatment on November 17, 1999, with Dr. S. Dr. S has diagnosed a cervical sprain/strain, cervical radiculopathy, left shoulder sprain/strain, thoracolumbar sprain/strain, and facet syndrome. Dr. S took the claimant off work at his initial appointment and has continued him in an off-work status.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass=n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable injury on _____. A review of the hearing officer=s decision demonstrates that she simply did not find the evidence presented by the claimant on the injury issue persuasive. In addition, the hearing officer specifically noted that the claimant "did not assert a claim until after he was fired for cause on November 12, 1999." The hearing officer was acting within her province as the fact finder in discounting the evidence tending to demonstrate that the claimant had sustained a compensable injury. Our review of the record does not reveal that the hearing officer=s determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. Disability means the Ainability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.@ Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

In his appeal, the claimant asserts that his attorney "did not do a proper job of representing me." Specifically, the claimant argues that his attorney at the hearing did not "bring out all the evidence" and that he "did not offer all the medical evidence." We are without the authority to consider any claim the claimant may have against his attorney relating to the quality of his representation. If the claimant elects to pursue such a claim, he must do so in a different forum.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge