

## APPEAL NO. 000671

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 March 10, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury to his low back on \_\_\_\_\_; and that he had disability beginning December 3, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, contending that these determinations were contrary to the great weight and preponderance of the evidence. The claimant responded that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The parties agreed that this case depends essentially on the credibility of the claimant, whose job primarily involved loading hopper cars. In this work, the claimant had to move chutes from one section of the car to another. He said that on \_\_\_\_\_, as he pushed on the chute to move it, he felt a severe pain in his lower back. He did not report it immediately in accordance with company policy because, he said, a lead man, Mr. B, had just announced a successful safety year and the claimant perceived a level of hostility on the part of the employer towards work-related injuries. He continued to work the next several days and testified that he reported the injury on November 29, 1999, after he saw Dr. A, D.C. Dr. A placed the claimant in a light-duty status, which she eventually changed to a full-duty release.

The claimant also acknowledged that he received a reprimand in October 1999 for an unrelated incident and that since the reprimand, he received a pay raise in connection with attending employer-sponsored schooling. He denied that he filed this claim as retribution for the reprimand. Two on-site colleagues who worked for another employer, but knew the claimant, testified that the claimant told them he hurt himself "on the chute" and looked to be in apparent pain. A personal friend also testified that the claimant told her he got hurt at work.

Mr. V, a coworker, testified that in October 1999 the claimant told him that he was going to exact revenge on the employer and also that his back hurt. Mr. V could not remember whether the claimant related the pain to his work or when the claimant said this. A written statement of Mr. B in evidence reflects that the claimant called him on November 29, 1999, to report an injury, giving a date of injury of November 26, 1999. Mr. B wrote in the statement that he saw the claimant on November 22, 23, and 24, 1999, and the claimant never mentioned anything about a back problem.

The claimant had the burden of proving he suffered a compensable injury and had disability as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so were questions of fact for the hearing officer to decide and could be proved by his testimony alone if found credible by the hearing

officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The carrier argued both at the CCH and on appeal that the injury did not happen, or at least did not happen as alleged, and that this claim was fabricated as an act of retribution by a disgruntled employee. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer provided an extensive discussion of the evidence in his decision and order and determined that the claimant was credible and had "overwhelmingly proved" his case. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence deemed credible by the hearing officer sufficient to support this determination.

The carrier appealed the determination of disability on the grounds that the claimant did not sustain a compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Philip F. O'Neill  
Appeals Judge