

APPEAL NO. 000723

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 10, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and the claimant had disability from April 2, 1999, to June 1, 1999, and at no other time. The appellant (self-insured) appeals, asserting that the great weight of the evidence is to the contrary. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was employed as a retail representative, and his job duties included merchandising cookies and crackers at grocery stores. The claimant testified that on _____, while walking down an aisle in a grocery store, he slipped on a strawberry and fell. The claimant said that his fall was witnessed by a customer, Ms. H, and this is reflected in the investigation completed by the grocery store. According to the claimant, he had immediate pain in his left shoulder, back and neck, and was unable to continue working. The claimant sought medical treatment with Dr. P on _____. Dr. P diagnosed acute moderate cervical and lumbar sprain/strain, and a left shoulder sprain. Dr. P took the claimant off work and the claimant began a course of physical therapy three times a week through June 2, 1999.

The claimant testified that he is a professional boxer. The claimant-s boxing record indicates that he had a boxing match on June 11, 1999, in which he knocked his opponent out in the fourth round. The claimant testified that during the months of April and May 1999 he did not train for a boxing match, but went to the gym two to three times per week to get massages, and perform side crunches to strengthen and stretch his back muscles. The claimant presented documentation from his trainer to support his testimony. According to the claimant, he was not in good shape for the boxing match on June 11, 1999, and began training only after being released to light-duty work by Dr. P in June 1999. The self-insured argues that the claimant was released to return to light-duty work by Dr. P on May 3, 1999, and that the claimant engaged in training during the month of May 1999.

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). The hearing officer found the claimant's testimony credible and concluded that the claimant did meet his burden of proving he sustained a compensable injury. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there is sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable injury on _____.

The self-insured appeals the hearing officer's determination of disability. The claimant testified that as a result of the injury, he was unable to work from April 2, 1999, through June 1, 1999. The medical records of Dr. P indicate that the claimant was taken off work on April 2, 1999. The claimant presented a letter from Dr. P dated June 3, 1999, which states that the claimant was released to return to work with limitations of no lifting over 20 pounds, no working over five hours per day, and no extended sitting or standing. The self-insured presented a form completed by Dr. P on April 28, 1999, which states that the claimant may return to light-duty work on May 3, 1999, and the claimant presented an identical form which appears to have the five changed to a six, indicating that he was released to light duty on June 3, 1999. 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. The hearing officer resolved conflicts in the evidence for the claimant and concluded that the claimant was unable to obtain and retain employment at his preinjury wage for the time period alleged. We find the evidence sufficient to support the hearing officer's finding that the claimant had disability from April 2, 1999, to June 1, 1999, and at no other time.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge