

APPEAL NO. 000737

On February 17 and March 7, 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 respondent (claimant) sustained a compensable injury on _____, and that claimant has had disability from October 12, 1999, through the date of the CCH. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

Claimant testified that on _____, he was injured at work when his head became pinned for a few seconds between the top of the second overhead cabinet he was installing in a mobile home at employer's plant and the roof of the mobile home that was lowered onto his head. Claimant said that the accident happened when the roof was raised up and then lowered a second time and that he had pain in his head, neck, right shoulder, and back. SG, the employer's foreman, testified that he was inside the mobile home watching claimant work when the roof was lowered and that the roof did not touch claimant's head and that claimant's head was not pinned between the cabinet and the roof. SG said that the roof was lowered only once and that claimant was not hurt because there was no accident involving claimant. AE, wrote that, after being informed of the accident, he went into the mobile home and saw that one cabinet was on the floor without fasteners on it and that there was no sign of that cabinet having been fastened to the wall. JH, a licensed vocational nurse employed by employer, testified that she examined claimant on _____, after claimant reported to her that his head had been pinned between the cabinet and roof and that she found no objective signs of any injury on that date or on any of claimant's subsequent visits to employer's nursing facility. DS, a registered nurse employed by employer, testified that she examined claimant on September 3, 1999, and found no objective signs of injury. Dr. B examined claimant on _____, following the claimed accident, and he diagnosed a contusion and strain of the cervical spine and placed claimant on light duty. A cervical MRI done on August 24, 1999, showed bulging discs at C5-6 and C6-7. Claimant underwent physical therapy. Dr. B referred claimant to Dr. M, who diagnosed right shoulder impingement and continued claimant on light duty. Dr. BL examined claimant in September 1999 and diagnosed myofascial pain syndrome of the neck and upper shoulder, right shoulder impingement syndrome, and protruding cervical discs, and noted that claimant needs to have an EMG to rule out cervical radiculopathy.

Employer provided claimant with light-duty work. TH testified that he worked with claimant while claimant was doing light-duty work and that he saw claimant toss a tube of caulk underhanded, dance with his arms waving above his shoulders, and whip his neck around and bark. JH said that she also saw claimant jerk his head around and growl when claimant was

playing a practical joke on her while being seen in the employer=s nursing facility after August 13th. Dr. ME reviewed claimant=s medical records at carrier=s request and he testified that there were no objective findings of an injury in the records; that a right shoulder x-ray was normal; that the cervical bulges are part of the aging process, were not caused by trauma, and would be a normal finding for a person 35 years of age (claimant=s age); that Dr. B=s diagnosis could be shorthand for the mechanism of injury; and that claimant had been diagnosed with carpal tunnel syndrome (CTS) on the right in December 1998. Claimant testified that he was told that he was terminated from employment on October 11, 1999, for falsifying workers-compensation documents. Claimant said he was still on light-duty work when fired. Claimant said that he started seeing Dr. F in January 2000 and that Dr. F told him to continue off work. Claimant said that he has looked for work that does not involve heavy lifting and that he has been receiving unemployment benefits.

ACompensable injury,@ Adisability,@ and Ainjury@ are defined in Sections 401.011(10), (16), and (26), respectively. 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 was injured while in the course and scope of his employment on _____, and concluded that claimant sustained a compensable injury on _____. The hearing officer also determined that, due to the claimed injury, claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from October 12, 1999, through the date of the CCH. There is conflicting evidence in this case. The hearing officer states that he found claimant=s testimony credible but did not find SG=s testimony credible. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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. Carrier=s contentions concerning the extent of claimant=s injury, that is, whether CTS and cervical disc bulges are part of the injury, are not properly before us because no issue as to the extent of the compensable injury was before the hearing officer and the hearing officer made no separate findings on the extent of the injury. The hearing officer resolved the disputed issue of whether claimant sustained a compensable injury on _____, by finding that claimant was injured while in the course and scope of his employment on that date and by concluding that claimant sustained a compensable injury on that date. That finding and conclusion, as well as the determination on the disability issue, are supported by sufficient evidence and are not contrary to the overwhelming weight of the evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

Dorian E. Ramirez
Appeals Judge