

APPEAL NO. 000763

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 21, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from July 30, 1999, through the date of the CCH. The appellant (carrier) appeals, urging that the hearing officer=s decision is against the great weight of the evidence. The claimant replies that the hearing officer=s decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, while inspecting a trailer, he slipped from the bumper and landed with his weight on his right leg, injuring his lower back. The claimant said that he felt numbness in his buttocks, but thought that it would go away. The claimant testified that on the afternoon of _____, he felt aggravating pain, was asked by his supervisor, Mr. R, what was the matter, and replied that he did not know, but had gotten out of a trailer and landed on his foot. According to the claimant, he was unable to stack tires at work that afternoon and was unable to get out of bed the next morning. The claimant testified that he called Mr. R on July 30, 1999, told him that he thought he had a muscle cramp caused by getting out of the trailer, and that he was going to seek medical treatment.

The claimant sought medical treatment on August 2, 1999, with Dr. G. Dr. G=s records indicate that the claimant gave a history of no specific trauma and no change in his work activities. The claimant testified that he did not tell Dr. G about the incident on _____, because he just wanted to find out what was wrong with him. An MRI performed on August 9, 1999, revealed a free fragment of a disc at L4-5, and the claimant had spinal surgery on August 31, 1999. The claimant testified that he has not been released to return to work.

The carrier argued that the claimant did not sustain a compensable injury on _____. In support of its position, the carrier presented recorded statements from Mr. P, a coworker; Mr. R; and the claimant. Mr. P stated that the claimant told him a few days before _____, that he had hurt his back or hip by lifting something for his mother. In the claimant=s statement taken on August 10, 1999, the claimant was asked to describe how the accident happened and replied *I wouldn't have any idea. I crawl up and in and out of trailers and do inspections on them. I don't know if I turned, twisted or whatever I done because whenever I did it, that day I didn't really notice it for about an hour and a half later and I was already on my way back to the shop.* The claimant explained that at the time he gave the recorded statement he was in pain, had received little sleep, and was on pain medication. Mr. R stated that on _____, the claimant told him that he did not know what was causing his hip pain.

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. The hearing officer resolved contradictions in the evidence for the claimant and concluded that the claimant met 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 carrier appeals the hearing officer's determination that the claimant had disability, stating that such a finding is contrary to the physical evidence and medical records. Given our affirmance of the hearing officer's determination that the claimant sustained a compensable injury on _____, the claimant could establish disability. The claimant testified that he was unable to work beginning July 30, 1999, as a result of his low back injury, and this is supported by the medical evidence. The claimant had spinal surgery on August 31, 1999. Whether disability exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We find the evidence sufficient to support the hearing officer's finding of disability.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst

Appeals Judge