

APPEAL NO. 000768

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 15, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. The claimant appeals, urging that the claimant=s testimony and evidence established that he sustained a compensable injury and had disability and that the hearing officer=s decision should be reversed. The respondent (carrier) replies that the hearing officer=s decision is fully supported by the evidence and the law and should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, he sustained an injury when he repeatedly installed and removed a car battery for a customer. According to the claimant, he had to extend his body over the front of the car and twist and lower the battery to install it and, at times, had to balance himself with one foot off of the ground. The claimant testified that he thought he had just overextended himself, but the next morning he was having pain in his arms, back, and leg. The claimant said that he attempted to report the injury to the store owner, Mr. T, from October 30, 1999, through November 6, 1999, but was unable to, even though he spoke with Mr. T at home on October 30, 1999. The claimant was terminated from employment on November 8, 1999, by Mr. W, the store manager. According to the claimant, he refused to relinquish his keys, Mr. W tried to forcibly get the keys, and an altercation ensued. Following the altercation, the claimant reported the injury to Mr. T on November 8, 1999.

The claimant testified that he did not seek medical treatment from _____, until November 8, 1999, because he feared that Mr. W would terminate his employment. The claimant sought medical treatment with Dr. H on November 19, 1999. Dr. H=s records reflect the claimant gave a history of working on an automobile when he injured his lumbar spine and both forearms. Dr. H diagnosed lumbar neuralgia, pain in both elbows and forearms, and lumbar muscle spasm. The claimant asserts disability from November 9, 1999, through the date of the CCH.

The carrier presented the testimony of Mr. T and Mr. W. Mr. T testified that he did not speak with the claimant on October 30, 1999. Mr. T said that he spoke with the claimant throughout the week of November 1, 1999, but that the claimant did not indicate that he had sustained a work-related injury. Mr. W testified that when he met with the claimant on November 8, 1999, the claimant never mentioned having sustained a work-related injury.

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). He resolved contradictions in the evidence against the claimant and concluded that the claimant did not sustain an injury in the course and scope of employment on _____. 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 did not sustain a compensable injury on _____.

The claimant appealed the hearing officer's finding of no disability. ADisability@is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge