

APPEAL NO. 000829

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 22, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable low back injury and did not have disability resulting from the injury. The claimant has requested our review of the disability determination while the appellant/cross-respondent (carrier) has requested review of the injury determination, both parties asserting that the evidence is insufficient to support the hearing officer's determinations. Both the carrier and the claimant filed a response to each other's appeal, asserting that the hearing officer's determinations are supported by the evidence.

DECISION

Affirmed.

The claimant worked as a carpenter setting forms and pouring concrete for highway bridges. The claimant testified that on _____, he sustained an injury to his lower back when he lifted a form, weighing approximately 500 pounds, with the assistance of a coworker. It is undisputed that the claimant's supervisor, Mr. P, witnessed the incident and that the claimant told Mr. P that he had been injured. The claimant testified that his back was sore, but he thought it was a strain. The claimant remained at work until the end of his shift, but testified that he did not do anything. The claimant said that he was given the next two days off with pay and when he returned on July 15, 1999, he worked modified duties (no lifting) until July 29, 1999, when he voluntarily left the job because he was moving to another city. The claimant obtained employment with another employer on August 10, 1999, as a plant supervisor, earning a higher average weekly wage. The claimant testified that he worked until October 20, 1999, when he quit because he was going to be required to perform heavy lifting.

On October 25, 1999, the claimant sought medical treatment with Dr. B. Dr. B's records reflect that the claimant presented with many physical complaints, including lower back pain, and that the claimant had not worked for the prior two months. In November 1999, the claimant changed treating doctors to Dr. S. Dr. S's record dated November 11, 1999, reflects that the claimant gave a history of a work-related injury on _____, picking up concrete forms weighing about 800 pounds and that he had been unable to return to work. A lumbar MRI performed on November 17, 1999, revealed a herniation at L5-S1.

The carrier presented the testimony of Mr. P. Mr. P testified that the form that the claimant lifted weighed approximately 150 pounds and that following the lifting incident on _____, the claimant said that he was sore and declined medical treatment. Mr. P said that the claimant performed the same job duties after _____, until he left employment.

The claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of employment and that he had disability as

defined in Section 401.011(16). Whether he did so were questions 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). She resolved contradictions in the evidence for the claimant and concluded that claimant did sustain an injury to his lower back on _____, in the course and scope of employment. 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 was sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable low back injury on _____.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The existence of disability is a question of fact for the hearing officer. While the claimant's doctors indicate that the claimant has been unable to work since October 25, 1999, the hearing officer was not bound by their opinions. The claimant testified that he could work, but did not realize that his condition could cause his herniation to rupture and cause further damage. The claimant also testified that had he not moved to a different city, he would have continued to work for the employer. The hearing officer did not find the claimant's testimony credible concerning why he left his job as a plant supervisor and notes that the claimant misrepresented to the doctors that he had not worked since his injury. After considering all of the evidence, the hearing officer resolved that the claimant failed to establish that he had disability. That determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, we will not disturb it. Cain, supra; Pool, supra.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge