

APPEAL NO. 000851

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 8, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_ and did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked for the employer as a stocker and his job duties included operating a standing forklift and counting product. The claimant testified that on \_\_\_\_\_, while counting product, boxes fell from a rack above him onto his neck and back, but he did not fall to the ground. The claimant said that after the incident he walked to an empty pallet and laid down. The claimant presented the recorded statements of coworkers, Mr. DI and Mr. FI. According to Mr. DI, he heard the noise, turned around, and saw the rack and merchandise fall on the claimant. Mr. FI said that the claimant was on the side of the forklift pulling the order when the merchandise fell on him. Mr. FI also said that he heard the noise, turned around, and saw the claimant "roll out of the way."

The claimant was taken by ambulance to the emergency room where he was x-rayed and diagnosed with a lumbar strain. On October 4, 1999, the claimant sought follow-up medical treatment with Dr. N, who diagnosed myospasm and lumbosacral, cervical and thoracic strain. The claimant sought medical treatment with Dr. D on October 4, 1999, and was taken off work. Dr. D's records indicate that the claimant had multiple bruises on his back. The claimant asserts disability from October 1, 1999, through January 6, 2000, when he was released to return to work.

The carrier argued that the incident did not occur as alleged by the claimant. The carrier's theory was the claimant was not meeting his production quota; he was moving product with a forklift and hit the rack; and he panicked when the product fell because he knew he would be in trouble, but was not hit by any product. The carrier presented the testimony of Mr. KF, a coworker, and Mr. CF, a second shift supervisor. Mr. KF testified that he saw the claimant on the forklift getting ready to pull product; that he heard the product fall approximately five seconds later; and that he turned around and saw the claimant look around the corner of the rack before he ran over to lie down on a pallet. Mr. KF said that five seconds was enough time for the claimant to have left the forklift, but that the product fell because the claimant did not lift the forklift high enough. Mr. CF testified that the claimant had been counseled for not meeting his production quota; that the rack

did not fall due to excessive weight; and that the rack had hit from the bottom and lifted up, causing the product to fall.

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 was presented with conflicting evidence and concluded that there was insufficient evidence that the claimant was injured in the manner he testified to. 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 did not sustain a compensable injury on \_\_\_\_\_.

The claimant appealed the hearing officer's finding of no disability. "Disability" 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:

Susan M. Kelley  
Appeals Judge

Gary L. Kilgore  
Appeals Judge