

APPEAL NO. 000876

On April 3, 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 or about \_\_\_\_\_; that claimant timely notified his employer of his injury; and that claimant had disability from December 8, 1999, through February 17, 2000. Appellant (carrier) requests that the hearing officer's decision on all issues be reversed and that a decision on all issues be rendered in its favor. Claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant began working for employer as a machinist in November 1997. Claimant testified that as a result of a motor vehicle accident he had in \_\_\_\_\_, he missed four days of work due to a sore neck and then returned to regular work duties. Claimant said that on or about \_\_\_\_\_, he injured his neck at work when he bent over and pulled two 15- to 25-pound steel shafts out of a barrel. His job was to do machining work on the shafts. He said that about 30 minutes after his injury, he reported to his supervisor, CC, that he injured his neck pulling the shafts out of the barrel. CC, employer's general manager, said that the shafts weigh 12 pounds and that claimant did not report the injury to him until December 30, 1999. Two of claimant's coworkers testified that they did not overhear claimant report a work-related injury to anyone. Claimant went to Dr. P on November 18, 1999, and a cervical MRI done in December 1999 showed disc bulges/protrusions at several levels. Dr. P referred claimant to Dr. W, who diagnosed a cervical strain. Dr. W wrote that claimant apparently lifted a 25- to 30-pound object from a metal drum in October 1999 and had severe neck pain and that claimant seemed to be suffering from the delayed effects of a cervical injury he suffered in October. Dr. P took claimant off work from December 8 to December 30, 1999, and Dr. W took claimant off work from December 30, 1999, to February 17, 2000, for physical therapy.

Claimant had the burden to prove that he sustained an injury in the course and scope of his employment and that he has had disability. Injury, compensable injury, and disability are defined in Sections 401.011(26), (10), and (16), respectively. Section 409.001 provides that notice of the injury must be given to the employer within 30 days of the injury. The hearing officer found that claimant sustained an injury to his neck during the course and scope of his employment when he lifted steel shafts from the barrel on or about \_\_\_\_\_; that on or about \_\_\_\_\_, claimant notified CC that he had sustained a work-related injury; that claimant timely notified his employer of a work-related neck injury; and that, due to the claimed injury, claimant was unable to obtain and retain employment at wages equivalent to claimant's preinjury wage from December 8, 1999, through February 17, 2000. The hearing officer concluded that claimant sustained a compensable injury on

or about \_\_\_\_\_; that carrier is not relieved of liability under Section 409.002; and that claimant had disability from December 8, 1999, through February 17, 2000. Carrier contends that the hearing officer's findings and conclusions are against the great weight and preponderance of the evidence. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Judy L. Stephens  
Appeals Judge