

APPEAL NO. 000895

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 31, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the date of his alleged injury is _____; and that he did not have disability. In his appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. In its response, the carrier asserts error in the hearing officer's date-of-injury determination. While that document is timely as a response, it is not timely to serve as an appeal of that issue and we will not reach the issue on appeal. Section 410.202.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a security officer for the employer. His duties required him to open and close the trailer doors of 18-wheelers to make sure the trailers were empty when they left the lot. The claimant stated that on _____ one of the doors he was closing was out of alignment and he had to force the door shut. He testified that the next morning he woke up with numbness in his right arm and leg. The claimant acknowledged that on December 15, 1997, he was involved in another incident at work. He stated that on that date the driver of the tractor-trailer drove off while the claimant was still holding on to the door handle, causing him to "fly through midair" and then be dragged a distance until the truck came to a stop. The claimant maintained that his right arm and leg were sore for about a week after the December 15th incident, but then he did not have any additional trouble with them until the _____, incident where he had to force the trailer door closed.

On January 26, 1998, the claimant sought medical treatment at an emergency room. The records from that visit reflect a history of the claimant's having developed right arm and leg numbness/tingling after "lifting the door on the back of a semi-truck." Another record from the emergency room states that the claimant developed numbness and tingling in his right arm and leg about a month ago when he "strained himself" at work.

The claimant moved to Wyoming and thereafter began treating with Dr. M, a neurosurgeon. In an August 3, 1998, report, Dr. M stated that the claimant's "clinical picture is a bit difficult to define." Dr. M referred the claimant for a lumbar MRI and for EMG testing. The claimant's lumbar MRI revealed mild degenerative changes at L5-S1 and was otherwise normal. The claimant's EMG testing was also interpreted as normal. In a March 16, 1999, progress notes, Dr. M noted the claimant's normal diagnostic testing and stated that he could "find no hard or even soft neurological deficits" and that the claimant's "lumbar muscle soreness doesn't provide me with a real clue as to what is going on."

Dr. B examined the claimant at the request of the carrier. In his February 27, 1999, report, Dr. B stated that the claimant "presents with a rather bizarre case of numbness that is in a nondermatomal distribution in the arm and leg with sparing of the right side of the trunk." Dr. B diagnosed intermittent "right-sided numbness limited to the upper and lower extremity." Dr. B stated that the numbness was of "uncertain etiology but appearing to be causally related to a lifting and twisting injury that occurred on _____."

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable injury on _____. A review of the hearing officer's decision demonstrates that, although he believed that the claimant was involved in an incident at work on _____, he simply was not persuaded by the evidence presented by the claimant that he sustained damage or harm to the physical structure of his body as a result of that incident. The hearing officer was acting within his province as the fact finder in so doing. His decision in that regard finds support in the fact that the diagnostic testing performed on the claimant was essentially normal. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. 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). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge