

APPEAL NO. 000908

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 April 11, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, failed without good cause to give timely notice of the claimed injury, and did not have disability. The claimant appeals, asserting simply that the "Great Weight of Evidence is to the contrary." The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a stock clerk. He said that on the morning of _____, as he reached to take a "very heavy" (he estimated its weight between 80 and 90 pounds) part out of a box on a shelf, the box began to fall on him and he felt low back pain when he pushed it back. He also said he reported it within five minutes to Mr. G, the safety director, and went to the offices of Dr. F that day and saw Dr. F the next day. He was placed in an off-work status because of low back pain and spasms. Dr. F's work excuses refer to a _____, date of injury, with one exception, which was a release allegedly signed on _____, the day before he said he actually saw Dr. F. In any case, the claimant said he was also injured on _____, when struck in the leg or foot by a forklift. He said he never lost time from this earlier injury and only reported it on _____, to Mr. G when Mr. G asked him about prior injuries. The claimant also testified that he never reported the current injury to anyone but Mr. G.

An affidavit of Mr. G in evidence stated that the claimant came to his office on November 21, 1999, and reported the _____, injury. Mr. G told the claimant to see a doctor, but he could not guarantee workers' compensation recovery because of the late reporting of the injury. Mr. G also said he asked the claimant three separate times about the date of the injury and the claimant always said it happened on _____, in an incident with a forklift. Contrary to the claimant's assertion, Mr. G said he never told the claimant to tell the doctor to use _____, as the date of injury.

There was also testimony of three other supervisors that they met with the claimant in mid-_____, and he was crying because of the pressures of the job. Each said that the claimant referred to a foot injury in August, but said nothing about a back injury in _____.

The claimant had the burden of proof on all disputed issues. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Each presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993; Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. Section

410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. She evaluated the evidence and found the claimant's testimony and evidence less credible and persuasive than the carrier's evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determinations of the hearing officer. Additionally, we find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge