

APPEAL NO. 000958

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 10, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; and that he did not have disability. In his appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a relief driver for (employer). He stated that at about 2:00 p.m. that day he was delivering clean linen and picking up dirty linen at a restaurant. He stated that he picked up a bag of dirty linen, which he estimated weighed about 75 pounds, and he felt a "twinge" in his low back. The claimant testified that he continued to work until December 1, 1999, when the pain became so severe that he could not continue working. On December 1st the claimant went to the emergency room with complaints of right hip pain. The claimant stated that he reported that he had had the pain for three weeks; however, the records reflect complaints of intermittent right hip pain for three months. He testified that he had his girlfriend call Mr. C, the service manager with the employer, and tell Mr. C that the claimant would not be at work on December 2, 1999, because he was in the hospital. The claimant underwent extensive testing in the hospital until a December 3, 1999, MRI revealed disc herniation at L4-5. The claimant sought follow-up care with Dr. I who took the claimant off work at his initial appointment and has continued him in an off-work status. The claimant stated that Dr. I has told him that he needs surgery but that the surgery has been delayed because of the contest of his workers' compensation claim.

Mr. C testified that on a date he cannot recall, there was a message on the answering machine from the claimant stating that he would not be in to work because he had been involved in a motor vehicle accident. The claimant denied that he had been involved in an accident on December 1, 1999, insisting that the only motor vehicle accident in which he had ever been involved was 12 to 13 years ago. Mr. C further stated that later in the same evening that the claimant left a message about having been involved in a motor vehicle accident, he received a telephone call from a woman, whose name he could not recall, advising him that the claimant had been taken to the hospital. Finally, Mr. C testified that the employer received a call on _____, from the restaurant where the claimant alleges he was injured picking up a bag of dirty linen complaining that its dirty linen was not picked up that day.

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 he simply did not believe the claimant's testimony that he had injured his back lifting a bag of dirty linen at work. The hearing officer was acting within his province as the fact finder in deciding to reject the claimant's testimony. In making his decision to discount the claimant's testimony, the hearing officer specifically noted that he found Mr. C's testimony, about the claimant's having been involved in a motor vehicle accident and that on the date of the alleged injury the linen was not picked up at the restaurant where the claimant alleges he was injured, credible. The hearing officer was acting within his province as the fact finder in so resolving the conflicts in the evidence. Nothing in our review of the record reveals 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). Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide us with a basis to reverse the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge