APPEAL NO. 000970

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 29, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant appeals these determinations on sufficiency grounds. The respondent (carrier) replies that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

Affirmed.

On _____, the claimant was assigned to perform new job duties using a "jacket machine." The claimant testified that the job required him to lift a metal drum weighing 30 to 45 pounds from a conveyor belt, place it into two separate machines, and then place it back on the conveyor belt. According to the claimant, he noticed that his lower back felt tight while working and he told his supervisor, Mr. C. The claimant reported for work on December 23, 1999, but asked to leave because of a migraine headache and was not scheduled to work on December 24 or 25, 1999. On December 26, 1999, the claimant sought emergency medical treatment for severe back pain and was taken off work for two days. The claimant testified that on December 27, 1999, he reported to a supervisor, Mr. G, that he had been injured at work on _____, and the employer sent him to be examined at (clinic). At the clinic, the claimant was diagnosed with a lumbar back strain and released to return to work with restrictions. The claimant subsequently sought medical treatment with Dr. K, who diagnosed a lumbar strain and took the claimant off work.

Although the claimant testified that he told the emergency room (ER) personnel on December 26, 1999, that he had injured his back at work, the medical records reflect that the claimant complained of back pain and said he "may have injured it twisting it yesterday." Mr. C testified that the claimant did not complain about back pain or his back being tight on _____. Mr. G testified that when he spoke to the claimant on December 27, 1999, the claimant said that he had hurt his back over the weekend and had sought medical treatment at the ER. Mr. G said that the claimant first reported being injured at work on December 28, 1999, and he was sent to the clinic pursuant to company policy.

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). She resolved contradictions in the evidence against the claimant and concluded that claimant did not sustain an injury to his lower back in the course and scope of employment on _____. 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 sustain 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:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge