APPEAL NO. 001018

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. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable low back injury on _____, and did not have disability resulting from the injury. The claimant has requested our review of the disability determination while the respondent/cross-appellant (carrier) has requested review of the injury determination, both parties asserting that the evidence is insufficient to support the hearing officer's determinations. Both the carrier and the claimant filed a response to the other's appeal, asserting that the hearing officer's determinations are supported by the evidence.

DECISION

Affirmed.

The claimant testified that on _____, he was pulling on rigging and injured his lower back. It is undisputed that the claimant reported the injury that day to Mr. G, the safety director, and was given Ibuprofen and ointment for his back. The claimant continued to work after the date of injury and was promoted to a "lead man" for the iron workers. According to the claimant, he performed lighter work, such as reading blueprints, but if he performed any strenuous work, his physical limitations were obvious.

The claimant moved to a different personal residence the first week in September 1999. The claimant testified that his participation in the move was limited to telling the movers what and where to move the furniture. The claimant said his back condition worsened and he sought medical attention with Dr. B on September 13, 1999. On September 17, 1999, the claimant presented to the emergency room and the medical records indicate that the claimant complained of lower back pain for 10 days and it was billed under the claimant's group health insurance. The claimant was examined by the company doctor on September 22, 1999, and was released to return to work with restrictions. The claimant was later diagnosed with a herniated disc at L5-S1 by Dr. W. The claimant presented statements of coworkers and family to support his position.

Ms. F, the employer's workers' compensation supervisor, testified that the first time the claimant related his low back problems to the _____, incident was on September 21, 1999. Ms. F testified that she spoke with the offices of Drs. B and W and was told that the claimant had not reported the injury as being work related prior to September 21, 1999. The carrier presented the statement of Mr. J, who stated that the claimant said that he hurt his back moving furniture into his new house. The carrier also presented statements of coworkers who state that the claimant did not appear injured and performed his regular job duties prior to the first week of September 1999.

The claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of employment and that he had disability as defined in Section 401.011(16). Whether he did so were questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. 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 for the claimant and concluded that the claimant did sustain an injury to his lower back on _____, while in the course and scope of employment.

"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). The existence of disability is a question of fact for the hearing officer. To defeat a claim of disability based on the existence of competing causes, the carrier must prove that something other than the compensable injury is the sole cause of the disability. Texas Workers' Compensation Commission Appeal No. 960054, decided February 21, 1996. Whether the claimant met his burden of establishing the injury as a producing cause of disability or the carrier met its burden of proving sole cause was for the hearing officer to decide.

While the claimant testified that was unable to work since September 17, 1999, the hearing officer was not bound by his testimony. The hearing officer states that the claimant was able to work for almost two months after _____, without many, if any, limitations, and it was not until after the household move that the claimant's back problem became disabling. After considering all of the evidence, the hearing officer determined that an intervening event occurred after _____, that solely caused the claimant's inability to work on and after September 17, 1999, and that the claimant was not unable to obtain and retain employment at preinjury wage because of his _____, injury.

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 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. Cain, *supra*; Pool, *supra*.

The decision and order of the Hearing Officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager