

APPEAL NO. 001058

On March 30, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury on _____; that claimant did not sustain a compensable injury to his low back and left knee on _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant testified that about a week and a half before _____, he was assigned by (employer) to work for a client company. Claimant said that on _____, while working at the client company, he was holding four or five five-foot-long iron rods in his arms and was attempting to put the rods on a cart when the cart spun away, he fell with the rods, a rod hit him on his left knee, the rest of the rods fell on his left knee, and he landed on his knees. Claimant said that he injured his left knee and back in that accident. Claimant said he had a left knee bruise when playing basketball in 1983 and that he had a right knee strain in 1997 when he was working for another company. Claimant said that he tried to report his injury to a supervisor at client company on _____. According to claimant's testimony and an employer's document, on _____, claimant reported to employer that he had been injured at work the day before. Claimant said that he did not know until October 4, 1999, that his assignment at the client company had ended. Claimant said that he has been unable to work because of his _____ left knee and back injury.

DW, client company's human resources manager, testified that toward the end of September 1999 claimant wanted part-time work, that he informed claimant that part-time work was not available, that client company then called employer and told employer that it no longer needed claimant, and that several days later he learned that claimant was claiming he had been injured while working for client company. DW also said that a supervisor for client company told him that claimant had complained about a knee injury he had sustained while working for another company, but DW did not state which knee.

Claimant went to Dr. A on October 2, 1999, and Dr. A's note of the same date states that claimant's right knee is swollen from a steel rod hitting it three days before and that claimant's left knee is swollen and painful. Claimant said that Dr. A's reference to his right knee was in error because it was his left knee that was hit. Claimant went to Dr. P on October 14, 1999, and Dr. P noted in the history section of his report that claimant injured his left knee and low back when steel rods fell on him and stated a _____, date of injury. Dr. P took claimant off work. Claimant said that he has not been released to return

to work. Dr. PA reported on January 6, 2000, that claimant told him that on _____, iron rods hit his knee and Dr. PA noted complaints of low back and left knee pain. An MRI of claimant's left knee done on January 24, 2000, showed a tear of the medial meniscus, joint effusion, and chondromalacia.

Claimant had the burden to prove that he was injured in the course and scope of his employment and that he has had disability. The hearing officer found that claimant did not injure any part of his body on _____, because he did not fall and no metal rods hit any part of his body, and that any inability of claimant to obtain and retain employment at wages equivalent to his preinjury wage is due to something other than a _____, compensable injury. The hearing officer concluded that claimant did not sustain a compensable injury on _____; that claimant did not sustain a compensable injury to his low back or left knee on _____; and that claimant has not had disability from the alleged injury of _____.

Claimant contends that the hearing officer's findings and decision are against the great weight and preponderance of the evidence and that he did sustain a compensable injury to his low back and left knee on _____, and that he has had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The hearing officer apparently did not find claimant's testimony concerning how he was injured to be credible. The trier of fact may believe that a claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Company, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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.

We conclude that claimant has not shown reversible error in the hearing officer's admission of the transcribed recorded statement of Ricky Huff (RH), a supervisor at client company, over its objection of untimely exchange. Carrier represented that it did not know that it would need to take RH's statement until February 16, 1999; that there was a delay in having the recorded statement transcribed; and that the statement was exchanged when it had been transcribed. The hearing officer determined that there was good cause for the late exchange. RH states that claimant did not tell him about an injury but did tell him that his feet and legs were hurting from walking.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge