

APPEAL NO. 001097

On April 25, 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 _____, 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 in _____ he had a low back injury for which he was off work for about two years, that in _____ he had a low back injury for which he was off work for about one or two years, and that in _____ he had a low back injury for which he was off work for about two and one-half years. Claimant testified that he began working for (employer) about nine days before his claimed injury of _____. Claimant testified that on _____, he was working for employer picking up trash at an apartment building when he injured the 10th rib on his left side and that on that same day when performing his assigned work he injured his low back when he lifted and carried toilets from first floor apartments and when he set a toilet down after carrying it from an upstairs apartment. Claimant said that he has been unable to work because of the claimed injuries of _____, since the date of injury.

Medical records for claimant's _____ back injury reflect that claimant was diagnosed as having lumbar degenerative disc disease with chronic low back pain. Claimant had a biopsy of his 10th rib on the left side done in 1995 and the postoperative diagnosis was a fibrous dysplasia benign lesion.

Claimant was seen at a hospital emergency room on September 14, 1998, for complaints of lower back pain and rib pain after carrying a toilet down stairs on September 9th and claimant was taken off work for several days. Lumbar spine x-rays done on September 14, 1998, showed small spurs at two disc levels and an impression of mild degenerative change was made. Claimant was seen by Dr. S on September 24, 1998, and Dr. S noted that claimant complained of back pain after picking up trash at work on September 9th. Dr. S diagnosed a low back strain, noted that there was functional overlay, and advised claimant that he could not determine whether claimant's pain was work related. Dr. S prescribed physical therapy. Dr. S noted on October 16, 1998, that there were no specific findings regarding claimant's back pain complaint, that he suspected claimant of malingering, and that he gave claimant a release to return to work. Claimant was seen by Dr. K on October 29, 1998, and Dr. K noted that claimant told him that he had had back pain about two years ago that had seemed to have resolved and that he had back pain after lifting commodes at work on September 9th. Dr. K diagnosed claimant as

having an acute exacerbation of recurrent back strains. Claimant was seen by Dr. SI in November 1998 and Dr. SI stated an impression of low back pain with several Waddell findings consistent with functional overlay.

Dr. M reviewed claimant's medical records at carrier's request and opined in November 1998 that he felt that claimant has not had any definable injury based upon any specific incident while on his job on _____. Claimant was seen by Dr. B on August 31, 1999, at the request of the Texas Workers' Compensation Commission and Dr. B gave a diagnosis of nonspecific low back pain and reported that claimant reached maximum medical improvement on November 13, 1998, with a one percent impairment rating.

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 wrote an extensive Statement of the Evidence and it is apparent that the hearing officer did not find claimant's testimony regarding his claimed work injury of _____, to be credible. The hearing officer made findings of fact and concluded that claimant did not sustain a compensable injury on _____, and that claimant has not had disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge