

APPEAL NO. 001193

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 15, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (self-insured) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked for the employer as a computer specialist, working a shift from 10:00 p.m. until 10:00 a.m. The claimant testified that while working a shift beginning _____, he lifted approximately 30 boxes containing computer printouts, each weighing 45 to 50 pounds, and he felt pain in his mid and lower back. The claimant completed his shift; returned to work on _____; and was required to lift more boxes. According to the claimant, his back pain became more intense and he reported the injury to an onsite supervisor at 12:50 a.m. on _____.

The claimant testified that at 9:00 a.m. on October 5, 1999, he was called to a meeting but did not know what it was about. The claimant met with Mr. P, manager of the computer center, and Ms. W, from human resources, and was terminated from employment for failure to provide a doctor's excuse for an absence on September 22, 1999. The claimant testified that following the meeting, he scheduled an appointment with Dr. Z.

The claimant received medical treatment from Dr. Z on October 6, 1999, and was taken off work. Dr. Z's records indicate the claimant gave a history of a work-related injury lifting boxes on _____, and that the claimant had complaints of tingling in both legs and pain in his lumbar spine. Dr. Z diagnosed an acute thoracolumbar dorsal sprain secondary to a work-related incident, acute thoracolumbar dorsal myofibrositis, and weakness/paresthesias of the lower extremities.

Mr. P testified that prior to the meeting on October 5, 1999, the claimant was aware that he was going to suffer disciplinary action, and possibly termination, and was aware that his work shift was going to be changed. Mr. P said that the claimant had been disciplined seven times between February 1999 and October 5, 1999. According to Mr. P, the claimant had a record of being tardy and absent from work and was required to provide a doctor's excuse for any absences, pursuant to a letter dated May 27, 1999. Mr. P said that at the meeting on October 5, 1999, the claimant told him that he did not have a doctor's excuse for his absence.

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). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer considered the conflicting evidence and did not find the claimant's testimony persuasive. The hearing officer concluded that claimant did not injure his low back while lifting boxes of computer printouts 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

Philip F. O'Neill
Appeals Judge