

APPEAL NO. 001240

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 16, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, _____, or _____, _____, or any other relevant date, and that the claimant has not had disability. The claimant appealed, urging that the hearing officer's decision that the claimant did not sustain a compensable injury or have disability is against the great weight and preponderance of the evidence. The respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

Affirmed.

The hearing officer's decision sets forth fairly and adequately the evidence in this case and it will only be outlined here. The claimant testified that he operated a front-end loader on _____, for about two hours when his back began having "dull pain" radiating into both hips and legs. He continued working on another loader and finished the workday. He contended that his pain increased overnight and when he returned to work the next day he reported his injury to his supervisors. The claimant testified that he believed the rocking action of the equipment caused his back to hurt. The claimant stated he had back pain prior to _____, which was about 10 to 12 years ago but after seeking treatment one time with a chiropractor he did not have any further problems with his back. The claimant testified he continued to work at his regular duties until his back pain increased to the point that he had to seek medical treatment on December 21, 1999. The claimant also testified the pain in his back after this date prevented him from working and he sought disability from December 21, 1999, to the date of the CCH.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Worker's Compensation Commission Appeal No. 950456, decided May 9, 1995.

This case turned on the issue of credibility. The claimant was diagnosed and treated for a lumbar strain. The claimant gave a history to his treating doctor of driving a front-end loader when he began having pain. He also provided a history of having sustained a back injury five years previously and was diagnosed with a slipped disc for

which he underwent MRI studies. The claimant denied at the hearing that he had an MRI for a prior back injury. The claimant also denied engaging in activities such as trimming trees, painting a fence, moving washers and dryers, and digging a hole to repair a septic tank after _____, although he did admit to installing a water pump on a car and helping to push a riding lawnmower into a pickup truck.

The claimant's treating doctor testified at the hearing that x-rays and an MRI performed on January 10, 2000, indicated degenerative changes and spurring. He admitted there was no evidence of herniation but that the claimant had small 2.0 mm bulges at L2-3 and L5-S1 with dessication which was common for persons in their mid-40s. The claimant's treating doctor testified that the claimant did not return for treatment after February 29, 2000, when he called to advise that he was going to change treating doctors.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____, _____, or _____, or on any other relevant date.

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.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge