

APPEAL NO. 001319

On May 17, 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 the claimant has not had disability. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, which was his first day working for employer, a coworker, JA, backed up a golf cart; the golf cart struck him in the buttocks, back, and right knee and pushed him through a metal garage door that fell off its hinges; and he landed on his back in the garage. The claimant said that his right knee was also struck by the garage door, that his right knee was hurting, and that he was limping after that incident. The claimant said that he showed JA and JM, the maintenance foreman, a small abrasion on his right knee after the incident. The claimant said that after the incident, he and JA put the garage door back up and then went back to digging a hole they had been digging prior to the incident. The claimant said that his wife picked him up at work at about 4:30 p.m. on _____, that he went home, and that his back started hurting.

JA stated in recorded statements that he was backing up the golf cart and barely bumped the claimant's leg with it when the golf cart was about six feet from the garage door, that the claimant was not pinned between the golf cart and the garage door, that the claimant did not contact the garage door, that the claimant was not knocked down, that the golf cart hit the garage door and the garage door came off its hinges on one side, that he and the claimant fixed the garage door, that the claimant said that his leg was hurting but also said that he was okay, that the claimant showed him his leg and the claimant's leg was not cut or bruised, that the claimant limped on and off after the incident, that while digging the hole the claimant said his back was hurting, that he and the claimant told JM that the garage door had been taken off its hinges, that the claimant did not tell JM that he was injured, and that the claimant asked JM if the employer had workers' compensation insurance.

JM stated in a recorded statement that the claimant did not tell him that he was injured, but did ask about whether the employer filed incident reports in case somebody got hurt, and that when the claimant left work, the claimant was walking fine.

The evening of _____ the claimant went to a medical clinic and the doctor noted that the claimant said he had been run over by a golf cart, that the claimant had complaints of back pain and right leg pain, and that the claimant had a right knee abrasion. The doctor diagnosed a right knee contusion and a lumbar strain, prescribed medication, and took the claimant off work for two days. The claimant returned to the medical clinic on February 14 with complaints of low back pain, and x-rays showed no bony abnormalities. The claimant said that the doctor took him off work for about seven days. The claimant began treating with Dr. A, on February 22 and Dr. A noted that the claimant had been struck by a golf cart and knocked through a garage door at work, diagnosed lumbar sprain/strain and thoracic sprain/strain, prescribed chiropractic treatment, and took the claimant off work.

The claimant had the burden to prove that he was injured in the course and scope of his employment. The hearing officer found that the claimant did not sustain any damage or harm to the physical structure of his body during the course and scope of his employment on _____, and concluded that the claimant did not sustain a compensable injury. The claimant questions the credibility of JA and JM and contends that the evidence shows that he was injured. The carrier does not dispute that the golf cart contacted the claimant's leg. However, there was conflicting evidence as to whether the claimant sustained any injury in the incident of _____. The claimant and JA gave conflicting accounts regarding the incident and, although the claimant said that he had a knee abrasion and the doctor at the medical clinic the evening of _____ noted a knee abrasion, JA said that when he looked at the claimant's leg immediately after the incident, it was not bruised or cut. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, it was the hearing officer's responsibility to determine what facts had been established from the conflicting evidence. 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. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Philip F. O'Neill
Appeals Judge