

APPEAL NO. 001333

On May 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 respondent (claimant) sustained a compensable injury on _____, and that claimant has had disability from February 21, 2000, through the date of the CCH, May 30, 2000. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor, or, in the alternative, that the case be remanded to the hearing officer. No response was received from claimant.

DECISION

Affirmed.

Claimant testified that on _____, he was performing his job duties for employer pulling a pallet jack with merchandise around a corner when he slipped on something on the floor and fell, injuring his lower back. There is conflicting evidence as to when and to whom claimant reported his accident but it is not disputed that he reported it to employer within 30 days of his claimed injury. Claimant noted on his written accident report dated February 23, 2000, that he injured his lower back pulling a pallet jack on _____, but indicated that he did not fall. Claimant has been treating with Dr. K since February 21, 2000, and Dr. K noted that claimant told him that he injured his lower back at work on _____, when he slipped and fell while pulling a pallet jack loaded with merchandise. Dr. K has issued several off-work slips, indicating on them that claimant is unable to work because of injuries sustained on _____. An MRI of claimant's lumbar spine done on March 21, 2000, showed a herniated disc at L3-4 impinging on the thecal sac and a herniated disc at L5-S1, impinging on the right S1 nerve root. Claimant said that he has been told by his doctors that he needs surgery. A videotape of claimant taken on March 13 and 14, 2000, shows claimant walking and getting in and out of a bus and a van.

The hearing officer found that on _____, while at work for employer, claimant injured his low back and that from February 21, 2000, through the date of the CCH, claimant has been unable to obtain and retain employment at his preinjury wage because of his work-related injury. The hearing officer concluded that claimant sustained a compensable injury on _____, and that claimant has had disability from February 21, 2000, through the date of the CCH. Carrier contends that the hearing officer's findings and conclusions are not supported by any evidence and that they are against the great weight and preponderance of the evidence. Carrier contends that claimant is not credible because of inconsistencies in the evidence concerning how he was injured and when and to whom he reported his injury.

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 stated in her decision that claimant was a credible witness. 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. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are 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

Alan C. Ernst
Appeals Judge