

APPEAL NO. 001365

On May 10, 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) sustained a left ankle injury in the course and scope of employment on _____; that the injury in the course and scope of employment does not extend to the lumbar spine or the hernia condition; that respondent (carrier) is relieved of liability because claimant failed to timely notify employer of a work-related injury and claimant did not show good cause for his failure to timely notify the employer; and that claimant has not had disability. Claimant requests that the hearing officer's decision that the injury sustained on _____, does not extend to claimant's lumbar spine or hernia, that carrier is relieved of liability because of claimant's failure to timely notify employer of a work-related injury, and that claimant has not had disability be reversed and that a decision on those issues be rendered in his favor. Carrier requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant testified that on _____, he was pushing one trash cart and pulling another trash cart when the trash cart he was pulling struck his left ankle, left hip, and left side of his back; that he felt a pull in his stomach; and that he fell down. A coworker stated in a written statement that she witnessed the accident on _____, in which claimant injured his left foot. Claimant said that he continued to work his regular duties until December 9, 1999, but that he was in pain. Claimant said that following the accident at work, he had to lean on one foot, which caused him to have lower back pain. Claimant said that he immediately reported his injury. Claimant's supervisor testified that the last week of September 1998, claimant reported that he injured his left foot at work on _____. Claimant completed a written report of injury on October 6, 1998, in which he reported that he injured his left foot on _____, when pulling a cart.

Claimant was sent to a doctor on October 6, 1998, and that doctor diagnosed claimant with a left foot sprain and a left leg sprain and released claimant for light duty and then released him to regular duty on October 16, 1998.

The plant's second shift, which is the shift claimant worked on, was laid off on December 10, 1999, with notice of the pending layoff having been given beforehand. The day before he was laid off, claimant went to Dr. T. Dr. T testified that he diagnosed claimant with a left ankle sprain/strain and a lumbar sprain/strain and took claimant off work. Dr. T testified that claimant also had an umbilical hernia, which Dr. T said is related to claimant's injury of _____. Dr. T also said that claimant's lumbar sprain/strain is related to claimant's ankle injury of _____, because the lumbar condition was caused by an altered gait that resulted from the ankle injury. Dr. T has continued to treat claimant

and issued several reports stating that claimant is unable to work. Dr. T referred claimant to Dr. M, who saw claimant on December 22, 1999, and reported that claimant told him that he injured himself in a weight-lifting incident at work in the month of April when he injured his left ankle. Claimant said that he had to lift the trash carts to empty them. Dr. M diagnosed claimant with an umbilical hernia and bilateral inguinal hernias.

The hearing officer's determination that claimant sustained a left ankle injury in the course and scope of employment on _____, is not appealed. Claimant appeals the hearing officer's decision that the injury in the course and scope of employment does not extend to claimant's lumbar spine or hernia condition, that carrier is relieved of liability because claimant failed to timely notify employer of a work-related injury, that claimant did not have good cause for failing to timely notify employer of his injury, and that claimant does not have disability. Whether claimant's injury in the course and scope of employment extended to his lumbar spine and hernias, whether claimant timely reported his injury within 30 days of his injury, whether claimant had good cause for failing to timely report his injury, and whether claimant has had disability were fact questions for the hearing officer to determine from the evidence presented. The hearing officer is the 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. We conclude that the hearing officer's decision on the disputed issues on appeal 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:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge