

APPEAL NO. 001372

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.* (1989 Act). With regard to the disputed issues of whether respondent (claimant) sustained a compensable injury on _____, and whether claimant has had disability, the hearing officer decided that claimant sustained a compensable injury on _____, and that he has had disability resulting from the injury of _____, from December 29, 1999, and continuing through the date of the CCH. Appellant (carrier) requests that the hearing officer's decision that claimant sustained a compensable injury on _____, and that he has had disability from December 29, 1999, through the date of the CCH be reversed and that a decision on those issues be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

Claimant's job duties for employer included installing water tanks underneath cement trucks. Claimant testified that on _____, he was installing a heavy, steel water tank underneath a cement truck at work when the water tank came loose and landed on his knees. He said that he felt pain in his knees and both legs to his waist. Claimant said that he reported the accident to his supervisor, RS, about five minutes after the accident occurred. RS testified that claimant did report the accident on _____. Claimant said that he continued to work his regular job from July 20 to December 15, 1999, but that he had pain in his knees and lower back. RS said that claimant said that he was fine and continued to work his regular job without complaints of pain until the second week of December 1999, which was after claimant was given a written warning about being tardy and missing work. RS also said that at a company party in October 1999, claimant jumped into a swimming pool from the top of a ladder on a slide and did not have any problem doing that. Claimant indicated that he did make that jump. Claimant said that by December 15, 1999, he could no longer stand the pain he was in and went to a hospital emergency room and that he then began treating with Dr. B.

Dr. B noted on December 29, 1999, that claimant told her that on _____, he was under a vehicle at work when a water tank crushed his knees and he felt a pop in his low back. Dr. C reported that an MRI of claimant's lumbar spine done on December 29, 1999, showed spondylolisthesis of L5 on S1, an occult fracture at S1, and dessication of L5-S1; that an MRI of claimant's right knee done the same day showed a tear of the medial meniscus, joint effusion, and injury to the lateral patellar retinaculum; and that an MRI of claimant's left knee done the same day revealed a suspected strain. Dr. B took claimant off work on December 29, 1999, and since then has issued work-status reports that note that claimant is unable to work due to injury to his knees and lumbar spine.

RS testified that in April 2000 claimant came to his office, said that he was fine, and asked if there was a job opening for him. RS said that he did not have a job for claimant because of a decrease in business. Claimant said that about two months before the CCH he told RS that after he has surgery, he would like to have his job back. Claimant said that he has not yet had surgery for his injury.

Dr. B referred claimant to Dr. E, who saw claimant on January 10, 2000, and wrote that a machine hit claimant's knee and claimant heard a pop in his back. Claimant said that he told Dr. E about the _____, accident when the water tank hit his knees. Dr. E diagnosed claimant has having a probable herniated nucleus pulposus of the lumbar spine or L5 radiculopathy and internal derangement of the knees, and recommended bilateral knee surgery and a lumbar injection. Dr. B wrote in April 2000 that due to economic duress, some patients work even though they have injuries to their low back and knees, and that the fact that they do not seek immediate medical attention does not mean that the injury did not occur. Dr. E further wrote that in his opinion claimant's injuries to low back and knees are the result of the injury of _____.

Dr. BH reviewed claimant's medical records at carrier's request and reported that he questions the relatedness of claimant's current symptoms to the alleged injury of _____.

Claimant had the burden to provide that he was injured in the course and scope of his employment and that he has had disability. The hearing officer found that claimant sustained an injury to his lower back and both knees in the course and scope of his employment on _____, and that due to the claimed injury, claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage beginning on December 29, 1999, and continuing through the date of the CCH. The hearing officer concluded that claimant sustained a compensable injury on _____, and that claimant has had disability resulting from the injury of _____, beginning on December 29, 1999, and continuing through the date of the CCH. Carrier contends that the findings and conclusions on the issues of compensable injury and disability are not supported by the credible evidence and should be reversed. 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 the conflicts in the evidence. We conclude that the hearing officer's findings, conclusions, and decision with regard to the issues of compensable injury and disability 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:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge