

APPEAL NO. 001457

On June 7, 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 the appellant (claimant) did not sustain an injury in the course and scope of his employment 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 quit working for the employer's sawmill in November 1999 and was rehired at the sawmill on December 1, 1999. The claimant said that on _____, he was told to shovel sawdust at work. The claimant testified that he felt a pulling in his lower back and hurt his lower back shoveling saw dust at work on _____; that he told his supervisor, SW, on _____, that he had hurt his back; that he again told SW on December 13, 1999, that he had hurt his back; that he went to a hospital emergency room (ER) on December 13, 1999; and that he was then seen by several other doctors. The claimant said that CC was working with him on _____, but that CC wandered off before he hurt his back. CC stated in a written statement that he worked with the claimant on _____, and at no time did the claimant say he was injured. SW testified that the claimant did not tell him on _____, that he was injured and that on December 13, 1999, the claimant told him that he thought he had a kidney infection. SW said that the claimant did not tell him that he was hurt at work until December 17, 1999.

The hospital ER records of December 13, 1999, record that the claimant was complaining of low back pain that he said had started two weeks before December 13 and that he said that he had not had a recent injury. The claimant denied that he told the hospital staff that he had had back pain for two weeks. The claimant was seen by another doctor on December 21, 1999, and that doctor noted that the claimant complained of pulling a muscle in his back approximately two weeks before that visit. The claimant began treating with a chiropractor for low back and leg pain in January 2000. An MRI of the claimant's lumbar spine done on April 5, 2000, showed a herniated disc at L5-S1 that impinges upon the thecal sac. Dr. G wrote on April 20, 2000, that the claimant is a candidate for back surgery and recommended further diagnostic testing.

The claimant had the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer found that the claimant did not sustain any injury while furthering the business of employer on _____, and concluded that the claimant did not sustain an injury in the course and scope of his employment. There is conflicting evidence in this case. 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.

The evidence shows that the claimant has a herniated lumbar disc; however, whether the claimant sustained an injury while working for employer as claimed presented a fact question for the hearing officer to determine from the evidence presented. The trier of fact may believe that a claimant has an injury, but disbelieve that the injury occurred while working for the employer. Johnson, *supra*. We conclude that the hearing officer's decision that the claimant did not sustain an injury in the course and scope of his employment on _____, 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

Judy L. Stephens
Appeals Judge