APPEAL NO. 001478
FILED AUGUST 8, 2000

On June 6, 2000, a contested case hearing (CCH) was held in_____, Texas, with _____presiding as the hearing officer. 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: (1) appellant (claimant) did not sustain an injury in the course and scope of his employment on _____; (2) respondent, Highlands Insurance Company (carrier 2), disputed the compensability of the claimed injury within 60 days of receiving written notice of the injury; (3) respondent, Continental Insurance Company (carrier 1), disputed the compensability of the claimed injury within 60 days of receiving written notice of the injury; (4) claimant has not had disability; and (5) for workers' compensation purposes, (employer), was claimant's employer on the date of the claimed injury. Claimant appeals the hearing officer's decision. Respondents contend that claimant's appeal is not sufficient, that claimant failed to serve them with a copy of his appeal, and request affirmance.

DECISION

Affirmed.

We find claimant's appeal sufficient to invoke the jurisdiction of the Appeals Panel. In accordance with our decision in Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992, respondents' delayed receipt of the appeal did not render the appeal untimely but did extend the time for responses to be filed.

Claimant testified that on _____, while performing his job duties for employer, he hurt his back when he used a rope to pull a dolly out of a basement. He said he informed his supervisor of his injury and that he continued to work until _____, when he went to a hospital. A _____, hospital record reflects that claimant told the doctor at the hospital that he had pain when he was pulling on a rope moving equipment in (month) and that claimant was diagnosed with prostatis and a lumbosacral strain. X-rays showed mild degenerative changes of the lumbar spine. Claimant said that he was taken off work and that the hospital referred him to (Dr. E), whom claimant began treating with on _____. Dr. E noted that claimant told him that he was pulling a dolly up from the basement with a rope in _____ when he had low back pain. Dr. E diagnosed claimant with a lumbar strain, cervical strain, and left leg radiculitis; took claimant off work; and provided chiropractic treatment for several months.

An administrative assistant for employer wrote in _____-that claimant's supervisor told her that claimant had told the supervisor that he had pulled a groin muscle trying to carry a dolly up a ladder, but that claimant did not believe that it was

necessary to go to a doctor, and that claimant had not told the supervisor about injuring his back.

Since the hearing officer ruled for the claimant on the employer issue, we do not address that issue on appeal.

The hearing officer decided that claimant did not sustain an injury in the course and scope of his employment on _____. It is clear from the hearing officer's decision that the hearing officer did not find the claimant's testimony to be credible and that the hearing officer did not believe that the claimant was injured at work as claimed. 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 decision on the injury issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16).

Carrier 2, the workers' compensation insurance carrier for employer, filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) on April 29, 1998, disputing compensability and noting that it first received written notice of the claimed injury on _____. No earlier date of written notice of injury to carrier 2 was shown. Carrier 1, the workers' compensation insurance carrier for another company, filed a TWCC-21 on May 10, 1996, disputing compensability and noting that it first received written notice of the claimed injury on _____. No earlier date of written notice of injury to carrier 1 was shown. We conclude that the hearing officer's decision that carrier 1 disputed compensability of the claimed injury within 60 days of receiving written notice of the injury and that carrier 2 disputed the compensability of the claimed injury within 60 days of receiving written notice of the injury is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCURRING OPINION:

I concur with the majority in affirming the hearing officer's decision. I write separately because not only did the hearing officer reject the claimant's testimony concerning the mechanism of the claimed in jury as not credible, itself a sufficient basis to find against the claimant, but went on to note the absence of expert medical evidence to support the claimant. The Texas Supreme Court has required medical expert opinion on causation to link an act or condition or trauma when that relationship is beyond the common knowledge and experience of laypersons. Western Casualty and Surety Company v. Gonzalez, 518 S.W.2d 524 (Tex. 1975). In my view, the claimed injury is not the type of injury that would have required expert medical evidence to prove and it would have been error to require it from the claimant.

Philip F. O'Neill
Appeals Judge