

## APPEAL NO. 001562

On June 5, 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 a compensable injury 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 testified that on \_\_\_\_\_, he and RS were working as long-haul truck drivers for (employer) when the claimant stopped the truck on the shoulder of the road to put on snow chains. The claimant said that some of the chains were stuck between the truck frame and the fuel tank and that when he pulled on the chains and they loosened up, he felt a burning sensation in his stomach and fell backwards hitting the ground. The claimant said that in that incident he sustained an umbilical hernia and injuries to his head, middle back, lower back, left hip, left leg, and left shoulder. The claimant said that RS did not see him fall, but that RS came around from the other side of the truck and helped him get up from the ground. The claimant said that he and RS stayed at a hotel that night and resumed their trip the next day. The claimant said that he made two more trips with RS and then saw Dr. S on December 7, 1999.

RS stated in a written statement that on \_\_\_\_\_, he and the claimant were putting snow chains on employer's truck; that the claimant was trying to get the chains that were frozen under the fuel tank loose; that he looked up when he heard a noise; that the claimant was lying on the pavement; that the claimant thought that the claimant was all right; that he could tell that the claimant was shook up; that the claimant had severe abdominal pain and left shoulder pain during the next two weeks of work; and that, in his opinion, the claimant's injury was job related.

Dr. S's notes of December 7, 1999, reflect that he saw the claimant that day for complaints of a cold, sore throat, and cough and that he diagnosed the claimant as having acute sinusitis. There is no mention of a work injury in Dr. S's December 7 report. The claimant said that on December 7 he told Dr. S about his hernia and shoulder pain after Dr. S had closed the claimant's patient records but that he did not tell Dr. S about the November 21 incident with the snow chains. The claimant said that Dr. S referred him to Dr. G for his shoulder and to Dr. M for his hernia. Dr. S wrote on April 11, 2000, that after he closed the patient records, the claimant mentioned his shoulder hurting and he referred him to Dr. G and that the claimant mentioned an umbilical hernia and he referred the claimant to Dr. M. The claimant said that he did not get to see Dr. G.

The claimant made a written report of his claimed injury of \_\_\_\_\_, to employer on December 11, 1999.

Dr. M saw the claimant on December 13, 1999, and Dr. M reported that the claimant told him that he developed pain in his left shoulder, left hip, lower back, and umbilicus a day or so after he fell off a truck. Dr. M diagnosed the claimant with an umbilical hernia, shoulder pain, headaches, and back and hip pain.

Dr. P reported that x-rays of the claimant's pelvis and left hip done on December 22, 1999, were normal; that x-rays of the claimant's lumbar spine done the same day showed extensive degenerative changes; and that x-rays of the claimant's left shoulder done the same day showed sclerosis suggesting minimal degenerative change but no fracture or subluxation. Dr. P reported that a CT scan of the claimant's lumbar spine done on December 28, 1999, showed scoliosis, degenerative changes at all levels, and impingement upon nerve roots at multiple levels. Dr. P noted disc bulges at L3-4 and L4-5.

Dr. S referred the claimant to Dr. N who saw the claimant on December 28, 1999, and reported that the claimant told him that he was hurt on \_\_\_\_\_ when he pulled hard on stuck chains on the truck, felt a burning sensation in his belly, and fell backwards. In his appeal, the claimant says he told Dr. N that it was around \_\_\_\_\_ that the accident occurred. Dr. N stated an impression of multiple contusions to muscles, mainly in the neck, left shoulder, lower back, and left hip region.

Dr. M performed an umbilical hernia repair on the claimant on January 10, 2000.

On January 18, 2000, Dr. S saw the claimant for complaints of shoulder popping, sore throat, and sinusitis. In response to written questions from the ombudsman, Dr. S noted that the claimant did not tell him on December 7, 1999, of the \_\_\_\_\_, accident; that on December 7, 1999, he did refer the claimant to Dr. M for a surgical consultation for the claimant's hernia; and that based upon the history of falling provided by the claimant, he believes that the claimant injured his left shoulder, left hip, low back, and abdomen on \_\_\_\_\_. In a note dated May 5, 2000, Dr. S wrote that he saw the claimant on December 7, 1999, for sore throat and cough complaints; that the claimant later called back to his office and asked for a referral to see a neurologist for a back problem that occurred on the job; and that he scheduled the claimant to see Dr. N.

Dr. N referred the claimant to Dr. H who saw the claimant on February 10, 2000, and reported that the claimant told him that in \_\_\_\_\_ he was pulling on some truck chains and fell backwards and injured his left shoulder and lower back. The claimant said that the \_\_\_\_\_ date of injury is incorrect and that his wife had informed Dr. H's office that the \_\_\_\_\_ date of injury was incorrect. Dr. H diagnosed the claimant as having lumbar degenerative disc and joint disease with L4 nerve root irritation/radiculopathy and left shoulder tendinitis. Dr. H gave the claimant epidural steroid injections in his lumbar spine and an injection in his left shoulder.

Dr. S referred the claimant to Dr. B who saw the claimant on February 2, 2000, and reported that the claimant's left shoulder x-rays were virtually normal except for some mild osteoarthritic change.

The claimant's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated March 9, 2000, states a date of injury of \_\_\_\_\_, and the cause of injury as falling when pulling on the snow chains.

The claimant had the burden to prove that he was injured in the course and scope of employment and that he had disability. The hearing officer determined that the claimant did not sustain a compensable injury in \_\_\_\_\_ or on \_\_\_\_\_; \_\_\_\_\_; or any other date. The claimant contends that his only date of injury was \_\_\_\_\_. The hearing officer apparently thought it necessary to rule on all dates of injury suggested by the CCH record. Under the particular facts of this case, we do not find reversible error in the hearing officer's ruling on the other dates of injury suggested by the CCH record. The claimant contends that the evidence proves that he did sustain an injury to the body parts claimed on \_\_\_\_\_. Although there certainly is evidence that the claimant was involved in an incident on \_\_\_\_\_, when pulling on the snow chains on employer's truck in the course and scope of his employment and that he fell to the ground, whether he sustained injuries in that incident was a fact question for the hearing officer to determine from the evidence presented.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995, the Appeals Panel noted that the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented; that as an appellate tribunal, the Appeals Panel is not a fact finder and does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result; that that is so even though, were we fact finders, we might have drawn other inferences and reached other conclusions; and that when reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. It is clear from the hearing officer's decision that he was not persuaded by the evidence that the claimant sustained any injury in the claimed work-related incident of \_\_\_\_\_. We conclude that the hearing officer's decision 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.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Judy L. Stephens  
Appeals Judge