

## APPEAL NO. 001671

On June 6, 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) sustained a compensable injury on \_\_\_\_\_; that the claimant did not sustain a compensable injury on \_\_\_\_\_; and that the claimant has not had disability. The claimant requests that the hearing officer's decision that he did not sustain a compensable injury on \_\_\_\_\_, and that he has not had disability be reversed and that a decision be rendered in his favor on those issues. The respondent (carrier) requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, he sprained his right ankle when he fell at work. The claimant went to a doctor on that date and was diagnosed with a right ankle sprain and was given a release to work light-duty. There is no appeal of the hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_.

The employer provided the claimant with a light-duty job sitting down and painting bolts in the warehouse. The claimant testified that on \_\_\_\_\_, he was sitting on a crate at work performing the light-duty job when he fell over backwards and landed on his back and head. He said that he yelled out when he fell but no one came to help him and that he then reported his accident. The claimant went to a doctor on February 22 and reported that he fell off the crate and was diagnosed with a neck sprain. The claimant began seeing another doctor on February 23 and was diagnosed with a cervical strain, thoracic strain, and posttraumatic cephalgia and was taken off work due to neck pain. A cervical MRI revealed degenerative disc disease.

MR, the warehouse manager, said that the claimant was provided with a chair to sit on to do his light-duty work, that he was in the warehouse on \_\_\_\_\_ and did not see the claimant fall nor did he hear the claimant yell, that no other employees in the warehouse saw the claimant fall on \_\_\_\_\_, and that the claimant was unhappy about having to work after his ankle sprain.

MG, employer's accounting administrator, testified that the claimant was not happy about having to work; that on \_\_\_\_\_ the claimant reported to her that he had fallen off his chair and had a headache; and that the claimant appeared to be over-exaggerating his complaints of pain.

The claimant appeals the hearing officer's decision that the claimant did not sustain an injury in the course and scope of his employment on \_\_\_\_\_, and that because the claimant did not sustain a compensable injury on \_\_\_\_\_, he did not have disability. The claimant contends that his testimony and medical records prove that he was injured on February 22 and that he had disability as a result of that injury.

The claimant had the burden to prove that he sustained an injury in the course and scope of his employment on \_\_\_\_\_, and that he had disability as a result of that claimed injury. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder 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. It is apparent from the hearing officer's decision that he did not find the claimant's testimony concerning his claimed injury of \_\_\_\_\_ to be credible. Since the medical reports concerning the claimant's claimed injury of \_\_\_\_\_ were in large part based on what the claimant told his doctors, the weight and credibility to be given to those reports by the hearing officer depended on the hearing officer's assessment of the claimant's credibility. Without a compensable injury having occurred on \_\_\_\_\_ as claimed by the claimant, the claimant would not have disability from that claimed injury because disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). 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.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge