

## APPEAL NO. 001702

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 28, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. The claimant appealed, contending that these determinations were against the great weight and preponderance of the evidence. The appeals file does not contain a response from the respondent (carrier).

### DECISION

Affirmed.

The claimant worked as a furniture salesman. He testified that on \_\_\_\_\_, he was asked to help move a dining table. He did so and, according to the claimant, felt low back pain when he put the table down. Mr. G, the coworker who the claimant said asked for the help, denied that he and the claimant moved furniture that day. The claimant was diagnosed with a lumbar strain. The claimant continued working until he was terminated on March 5, 2000. There was other evidence that the claimant did not display any pain behavior after the claimed injury.

The claimant had the burden of proving he sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so presented a question of fact for the hearing officer to decide and could be determined based on the claimant's testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer commented that she did not find the claimant credible. The evidence was in obvious conflict.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge