

APPEAL NO. 001910

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 22, 2000. The hearing officer determined that: (1) appellant/cross-respondent (claimant) did not sustain a compensable injury and did not have disability; and (2) claimant was an employee of (employer), rather than an independent contractor. Claimant appeals the injury and disability determinations on sufficiency grounds. Respondent/cross-appellant (carrier) contends that these determinations are supported by the evidence. Carrier appealed the determination regarding whether claimant was an independent contractor. Claimant responded that this issue was correctly decided. The parties entered into stipulations regarding the issue of average weekly wage and coverage and the resolution of those issues was not appealed.

DECISION

We affirm.

We first note that carrier contends that claimant's appeal is untimely. However, the hearing officer's decision was distributed on July 19, 2000, and the "deemed" date of receipt by claimant was July 24, 2000. Claimant's appeal was due to be filed on August 8, 2000, and was filed on August 3, 2000. Accordingly, claimant's appeal was timely filed.

In his appeal, claimant contends the hearing officer erred in determining that he did not sustain a compensable injury and that he did not have disability. Claimant points to evidence he contends supports his claim, including his testimony and the medical reports. The hearing officer summarized the facts in his decision and order. Briefly, claimant testified that he sustained an injury on _____, when he picked up a heavy roll of felt and felt his back pop. He said he did not think it was serious, and he left work shortly after this. Claimant said he called the next day to tell them about his injury. Claimant said his doctor diagnosed a herniated disc and that he has been unable to work since _____, because of pain from the claimed injury.

The applicable law regarding injury and disability issues and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The matters claimant raises in his brief involved credibility and fact issues, which the hearing officer resolved. The hearing officer apparently determined that claimant did not meet his burden of proof. The hearing officer's determination that claimant did not sustain a compensable injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because claimant did not have a compensable injury, he did not have disability. A claimant must have a compensable injury in order to have disability.

Claimant complains of the fact finding that claimant did not notify employer about the claimed injury, asserting that it is surplusage. Timely reporting of an injury was not an

issue before the hearing officer. However, this could be considered as a factor in general, regarding credibility. We perceive no reversible error.

Carrier contends that the hearing officer erred in determining that claimant was an employee rather than an independent contractor. The applicable law in this regard is set forth in Texas Workers' Compensation Commission Appeal No. 950075, decided February 28, 1995, and Texas Workers' Compensation Commission Appeal No. 000105, decided March 8, 2000. Whether an injured worked was an "employee" or an independent contractor is a question of fact, determined in part by considering right to control. Goodnight v. Zurich Insurance Co., 416 S.W.2d 626 (Tex. Civ. App.-Dallas 1967, writ ref'd n.r.e.). There was evidence that, although claimant was hired for a roofing job, claimant also did other work for employer when requested. The hearing officer could find that claimant took direction from employer in additional duties, such as cleaning the inside of the building, and that he was told there would be other types of work for him to do. We have reviewed the evidence and the hearing officer's determinations, and we conclude that his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge