

APPEAL NO. 001931

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 July 13, 2000. The hearing officer determined that appellant (claimant) did not sustain a compensable low back injury on _____, and that he did not have disability. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable injury and that he did not have disability. Claimant complains that the evidence supported his claim. The hearing officer summarized and discussed the facts in his decision and order. Briefly, claimant said he was injured at work pulling heavy cables and moving heavy totes. 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 raised in his brief involved credibility and fact issues, which the hearing officer resolved. A review of the decision and order indicates that the hearing officer simply did not believe that claimant sustained an injury as claimant claimed. The hearing officer was acting within his province as fact finder in deciding what evidence he believed. The hearing officer decided what weight to give to claimant's testimony and the MRI report. We conclude that the hearing officer's determination that claimant did not sustain a compensable low back 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. Disability, by definition, requires that there must have been a compensable injury.

Claimant complains that carrier "did not timely raise a preexisting condition defense." Dispute resolution proceedings are not governed by strict rules of pleading. Texas Workers' Compensation Commission Appeal No. 992343, decided December 6, 1999. Carrier was entitled to offer evidence regarding whether claimant sustained a compensable injury at work. Further, we note that carrier made the complained-of assertion at the benefit review conference. We perceive no error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge