APPEAL NO. 001974

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 19, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was moving a 600-pound drum of liquid chemical up a ramp using a barrel dolly; that a wheel of the dolly hit a screw sticking out of the ramp and the dolly came to an immediate stop, which pushed him backwards; and that he regained his balance by bracing himself against some other drums and a trash compactor. He stated that he felt a sharp pain in his back immediately after the incident, but, that it subsided somewhat and he was able to complete his shift on April 11th. The claimant testified that he reported his injury to Ms. L, his supervisor, on April 11th; that his pain increased that evening; and that he left work early on April 12th because his back pain had worsened; and that he sought treatment with Dr. P.

In a "To Whom it May Concern" letter dated April 14, 2000, Dr. P stated that the claimant presented on April 12, 2000, with complaints of mid to low back pain. Dr. P gave a history of the claimant's having "felt immediate pain from an injury on 3-23-00 at his place of employment." Dr. P further reported that the claimant's pain had progressed such that by April 10, 2000, he "could not tolerate the pain any longer and sought our care." Dr. P diagnosed "facet imbrication, lumbar strain/sprain, and lumbar segmental dysfunction" and took the claimant off work. The claimant testified that he treated daily with Dr. P from April 12th to April 26th and that then he changed treating doctors to Dr. G. Dr. G's records reflect that the claimant injured his back moving the drum at work. Dr. G took the claimant off work and has continued him in that status. Dr. G referred the claimant for a lumbar MRI, which was performed on June 8, 2000, and revealed moderate disc spondylosis a L4-5; a Schmorl's node, superior endplate at L5, with reactive marrow intensity; and mild bilateral foraminal narrowing at L4-5.

The claimant had the burden to prove that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts have been established. Texas

Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the incident described by the claimant occurred on _____, and that he may have had back pain as a result of the incident. However, the hearing officer further determined that the claimant "failed to prove by a preponderance of the evidence that the incident caused any damage or harm to his back." The hearing officer was acting within his province as the finder of fact in so finding. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge