

## APPEAL NO. 002128

On August 23, 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 respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability from December 14, 1999, through the date of the CCH. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, he was working as a carpenter for the employer and that in the course of performing his work duties he injured his lower back when he lifted and carried a 150-pound table saw. The claimant's supervisor, MG, stated that the claimant did not lift and carry the table saw. EB stated that he saw the claimant pick up the table saw on \_\_\_\_\_. The claimant said that he did not tell MG or the employer's general manager, JB, about his injury because he thought he had a pulled muscle that would resolve in a few days. The claimant said that after his injury, he continued to work on December 13 and that on December 14 he again felt back pain when he tied his shoes. The claimant said that he went to work on December 14 and talked with JB but did not tell JB he was injured.

JB testified that on December 14 the claimant voluntarily quit his job, that the claimant did not tell him he was injured, and that the claimant wanted to be laid off so that he could collect unemployment.

The claimant said that on December 16 he felt strong pain in his back when he tied his shoes, that the pain in his lower back was in the same area as the pain he had been experiencing from his injury lifting the table saw, and that the lower back pain started going up to his neck. The claimant went to Dr. M on December 17 and Dr. M noted that the claimant told him that he had pain in his lower and upper back and in his neck from a work-related injury on \_\_\_\_\_, when he moved a table saw. Dr. M noted that the claimant said that he initially had lower back pain and that the claimant noticed the onset of mid back pain and neck pain on December 16. Dr. M diagnosed the claimant as having a strain/sprain of the cervical, thoracic, and lumbar spine and took the claimant off work. The claimant continued to treat with Dr. M through February 2000. An MRI of the claimant's lumbar spine done in February 2000 showed a disc herniation at L2-3.

The claimant said that he applied for unemployment benefits with the Texas Workforce Commission (TWC) and that he told the TWC that he wanted to work but that he was injured. It is unclear whether the claimant obtained unemployment benefits.

The claimant said that he made \$15.00 an hour when working for the employer. He said that on March 28, 2000, he obtained a job with another company installing the tops of electrical boxes for \$7.00 an hour and kept that job for two weeks. He said he quit that job because of lower back pain.

The claimant began treating with Dr. E in July 2000 and Dr. E noted that the claimant told him that he was injured when he lifted the table saw at work on \_\_\_\_\_. Dr. E diagnosed the claimant as having a severe spinal sprain/strain and a herniated disc at L2-3. Dr. E recommended that the claimant refrain from working. Dr. E opined that the claimant's symptoms are consistent with the accident described to him by the claimant.

The claimant had the burden to prove that he sustained an injury in the course and scope of his employment and that he had disability. The hearing officer found that the claimant sustained an injury to his back on \_\_\_\_\_, while working in the course and scope of his employment and that, due to that injury, the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wages from December 14, 1999, through the date of the CCH. The hearing officer concluded that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability from December 14, 1999, through the date of the CCH. There are conflicts in the evidence which the hearing officer resolved in favor of the claimant. As the trier of fact, it is the hearing officer's responsibility to resolve the conflicts in the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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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Thomas A. Knapp  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge