

APPEAL NO. 002130

On August 2, 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 an injury in the course and scope of his employment on _____, and that the claimant had disability from March 6, 2000, to July 5, 2000. 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 he is an over-the-road driver for the employer; that on _____, he and his partner, CG, were on a return trip from Arizona in the employer's cab-over freightliner; that he was taking his turn sleeping in the sleeper compartment of the truck and CG was driving; that he woke up when the truck hit a bump and started to get out of bed; that he did not feel pain when he woke up but that when he put his feet on the doghouse, which is the thing between the seats, he felt lower back pain and could not move; that CG drove 10 miles to a truck terminal where an ambulance was called; that the ambulance personnel took him out of the truck cab on a board; that in the ambulance he began to have numbness in his right hand; and that he was taken to a hospital. In a recorded statement, the claimant did not remember the truck hitting a bump. CG stated in a recorded statement that he did not remember the truck hitting a major bump on _____, but that it is one continuous bump with the cab-over truck. CG stated that the claimant told him that he could not move when the claimant had gotten his feet out of the sleeper compartment.

The _____, hospital report noted that the claimant complained of lower back pain and numbness and tingling in two fingers of the right hand. The hospital record noted a history of back problems. The claimant said that he had not had right hand numbness or lower back problems prior to _____. The March 5 hospital record noted a diagnosis of acute lumbar strain and the claimant was prescribed medications and a wrist splint.

The claimant was seen by Dr. G on March 7, 2000, and then began treating with Dr. S on March 8, 2000. Dr. S noted that the truck had hit a bump and that the claimant felt back pain climbing out of the sleeper compartment and had numbness in his right hand. Dr. S wrote that the bump and attempt to get out of the bed in the sleeper compartment caused the claimant's injuries and symptoms. Dr. S took the claimant off work. The claimant said that his back pain resolved within about four weeks of his injury but that he continued to have numbness in his right hand. An EMG done on April 10, 2000, showed right cubital tunnel syndrome and Dr. K performed a right ulnar nerve

release on May 8, 2000. Dr. K wrote that the claimant had severe back pain and numbness in the right hand and that the claimant's condition is directly related to injuries that occurred on the job.

The claimant said that when he was released to light-duty work on April 18, 2000, the employer told him that no light duty was available for him. The claimant said that he was released to regular work on July 5, 2000, and that he has been working since July 7, 2000.

The claimant had the burden to prove that he was injured in the course and scope of his employment and that he has had disability. There is conflicting evidence regarding whether the truck hit a bump and the hearing officer resolved the conflict by finding that the truck hit a bump. The hearing officer found that on _____, the claimant sustained an injury to his low back and right arm in the course and scope of his employment and that due to the injury the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from March 6, 2000, to July 5, 2000. The hearing officer concluded that on _____, the claimant sustained an injury in the course and scope of his employment and that the claimant had disability from March 6, 2000, to July 5, 2000. While there is conflicting evidence in this case, the opinions of Drs. S and K support the hearing officer's decision. The weight to be given to the testimony, recorded statements, and medical evidence was for the hearing officer to determine as the trier of fact. 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.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge