

APPEAL NO. 002582

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 October 11, 2000. With regard to the issues before her the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant does not have disability.

The claimant appeals, challenging some of the respondent's (carrier) evidence and asserting that he was truthful and credible and that the medical evidence established an injury and disability. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The carrier responds urging affirmance.

DECISION

Affirmed.

The claimant was employed in the employer's distribution center warehouse. The claimant testified that at about 11:30 a.m. on _____, while picking up a box, he twisted his back. The claimant reported his injury the same day and sought medical treatment from Dr. G, a chiropractor. Dr. G, in an undated, handwritten report noted that the claimant's history showed "no previous history of back problems." (Emphasis in the original.) The claimant, by his admission, had had at least one other workers' compensation injury and the carrier offered evidence of several other work and nonwork-related injuries. The carrier also offered testimony that an anonymous telephone caller, who only gave her name as Sharon, had called the employer at about 7:30 a.m. on _____, several hours before the event, and reported to a human resource specialist that the claimant was going to claim a work injury to his back that day and seek treatment from Dr. G.

The hearing officer fairly summarized the evidence, commented that "Claimant was evasive throughout much of the hearing," and that the claimant "was a poor historian . . . which greatly affected Claimant's credibility."

The testimony was in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Because we are affirming the hearing officer's decision that the claimant has not sustained a compensable injury, the claimant cannot by definition in Section 401.011(16) have disability.

We affirm the hearing officer's decision and order.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge