

APPEAL NO. 010072

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 December 19, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have disability.

The claimant has appealed these determinations, and the respondent (carrier) responds by seeking affirmance.

DECISION

We affirm the hearing officer's decision.

The claimant was employed as a forklift driver and said that he injured his left shoulder at around 8:30 a.m. on the morning of _____, when he lifted a box. He agreed he had been involved in a motor vehicle accident (MVA) the evening before, but argued that only his neck was hurt in that accident. He said he reported his injury to the human resources director, Ms. A, on the 18th. However, Ms. A testified that the claimant came into her office and waited for her to arrive, which she did at 8:00 a.m., and he then asked for the day off to see a doctor because of his MVA injury. She said he then called in later to say the doctor had taken him off work for three days for his injured neck. The claimant showed that he missed time and also submitted doctor's notes for treatment to his shoulder. The claimant was terminated on August 25 and had been warned about absenteeism.

No injury. The hearing officer did not err in finding that the claimant did not sustain an injury at work. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). His decision will not be overturned when there is evidence to support it, even if contrary inferences could be drawn. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

No disability. Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines "disability" as: "the inability **because of a compensable injury** to obtain and retain employment at wages equivalent to the preinjury wage." (Emphasis added.) As there was no injury, the threshold finding for disability was not met.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge