

APPEAL NO. 010371

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 January 23, 2001. With regard to the unresolved 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 because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appeals, emphasizing evidence in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Much of the evidence was both confusing and contradictory. Basically, the claimant, a dishwasher in the employer's restaurant, contends that as he was carrying a load of about 15 to 20 plates, he slipped on a wet spot and fell to the floor injuring his back. Although the claimant testified that two coworkers saw him fall, the testimony and statements only indicate that two ladies saw the claimant sitting on the floor and that he appeared to be in pain. It is undisputed that none of the dishes were broken. In dispute is whether the claimant told the chef that he had hurt himself at a second job the day before (_____) and also disputed is the reason why the claimant had left work early on _____. One of the claimant's coworkers took the claimant to a hospital emergency room (ER) on September 10, where he was treated and released to return to "work w/o restrictions on 9/13/2000." On September 13, the claimant went to another hospital ER where he was treated for acute low back pain and released to light duty. Subsequently, on September 18, the claimant saw a doctor who took him off work, prescribed medication, and suggested the claimant see a specialist. The claimant saw Dr. B on September 26 and has been treating with Dr. B since. Dr. B diagnosed lumbar radiculopathy.

The hearing officer notes several contradictions in the claimant's testimony and concluded that the claimant's "testimony regarding a fall with a stack of plates was not credible." There was conflicting evidence presented at the hearing on the issues. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge