

APPEAL NO. 010496

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 February 15, 2001. With regard to the disputed issues, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had two periods of disability. The appellant (carrier) appealed, arguing that the claimant's condition is a continuation of a prior 1995 injury and that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he was employed by employer as a truck driver for about 20 years. In 1995 the claimant sustained a compensable cervical spine injury and was given a 16% impairment rating as a result. The claimant testified that he was off work for 9 months for that injury and returned to work with no restrictions, performing the same job. The claimant testified that he fully recovered from that injury and that he had worked from the time he returned to work from the 1995 injury until _____, without seeking medical care. The carrier stipulated that claimant was involved in an accident on _____ wherein the claimant slipped and fell, striking his lower back area on a fuel tank.

The hearing officer determined that "the evidence indicates that Claimant's injury is not a continued existence of symptoms or a mere re-occurrence or a progression of the Claimant's pre-existing condition, but a new compensable injury." The carrier contends that the hearing officer's decision is error because the claimant's condition is a continuation of the claimant's preexisting injury from 1995. The carrier concedes in its brief that "the Claimant sought and received little, if any medical care and was most likely asymptomatic during the interim period." The carrier also notes that "although the Claimant's symptoms may have subsided after the 1995 injury, the underlying condition [of a herniated disc] never resolved."

The medical evidence concerning whether there was a new injury or a continuation of the previous injury was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer determined that the preponderance of the evidence established that the claimant sustained a new compensable injury on _____.

Similarly, the claimant had the burden to prove that his injury caused his disability. The hearing officer determined that “the evidence indicates that the Claimant was unable to work from November 17, 1999, through January 16, 2000, attempted to work between January 17, 2000, through January 19, 2000, and was again unable to work from January 20, 2000, through the date of [the CCH].” The claimant testified that he was not able to work after November 16, 1999, until he tried to return to work on January 16 through January 19, 2000. The claimant testified that after January 19 he has not returned to work. Disability may be established by the claimant's testimony alone, if believed. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The hearing officer's decision is supported by sufficient evidence and accordingly, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge