

APPEAL NO. 010687

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 March 14, 2001. In response to the issues, the hearing officer determined that respondent (claimant) sustained a compensable occupational disease injury with a date of injury of _____, and that he had disability from October 11, 2000, through the date of the hearing. Appellant (carrier) appeals these determinations on sufficiency grounds, contending that claimant was not a credible witness and that his account regarding his injury was inconsistent over time. Claimant did not respond on appeal.

DECISION

We affirm as reformed.

We have reviewed carrier's contention that claimant did not sustain a compensable injury and that he did not have disability and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Although carrier does not raise it, we note that the testimony and findings of fact support a determination that claimant sustained a specific injury rather than a repetitive trauma injury. Although the bouncing in the truck described by claimant took place over a period of time, it all took place on one day: _____. This is a specific injury rather than a repetitive trauma injury. Texas Workers' Compensation Appeal No. 992851, decided January 27, 2000. The better practice in this case would have been to reframe the issue at the hearing since the parties seem to have tried by consent the issue of whether claimant sustained a specific injury. In any case, we reform Conclusion of Law No. 3 to state that, "[c]laimant sustained a compensable injury on _____." Finding of Fact No. 4 supports this reformed conclusion of law because the hearing officer determined that the injury took place on _____. See *generally* Texas Workers' Compensation Commission Appeal No. 992343, decided December 6, 1999.

As reformed, we affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge