

APPEAL NO. 012065
FILED OCTOBER 17, 2001

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 August 13, 2001. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have disability. The claimant appeals, arguing that evidence presented at the CCH clearly established that he injured himself on the job. The respondent (carrier) filed a timely response, urging that the evidence was sufficient to support the determinations of the hearing officer.

DECISION

Affirmed.

The claimant, a disability specialist for employer, testified that on _____, while at work, he fell out of a chair while bending to retrieve papers that had fallen. He said that the chair he was sitting in had four wheels and when he bent forward to pick up the papers that had fallen, the chair went backwards, which caused him to fall onto his buttocks, and that, as a result, his neck "popped like a whiplash and hit the back of the desk and knocked the keyboard over." The record reflects that there were no witnesses to this incident. The claimant testified that his general job duties were light in nature. Additionally, he testified that in September 2000, he was demoted, relieved of managerial duties, and his pay was decreased. Further, he testified that in November 2000, he was having disagreements with the new disability manager and that after the injury occurred his employment was terminated.

The claimant further testified that he typed a note dated December 12, 2000, which stated that he was unable to function at work because of panic attacks and that the note did not mention a job injury or workers' compensation claim.

Dr. B, the carrier's doctor, testified that he had reviewed the claimant's medical records and conducted a clinical examination; that there were no objective findings to support an injury; and that the conditions reflected on the December 2000 MRI were not caused by an alleged incident on _____. Dr. B also testified that he had reviewed the claimant's 1998 lumbar myelogram and that it showed the same thing as the claimant's 2000 MRI. Dr. B's medical report states that "mere cutaneous stimulation elicits jumping by the [claimant], out of proportion to stimulation applied," and that "[claimant] will move his neck about five degrees in all directions when I specifically tested however when his attention is misdirected, he moves it normally."

The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm." Section 401.011(26). A history of an injury reported by a claimant and recorded in a medical report does not

constitute independent evidence that the injury occurred as reported. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Whether he did so was a question of fact for the hearing officer to decide and could be proved in this case by his testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination that the claimant did not sustain a compensable injury. We also find no error in the hearing officer's determination that the claimant had disability. The 1989 Act requires a finding of the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL
10000 N. CENTRAL EXPRESSWAY
DALLAS, TEXAS 75265.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge