

APPEAL NO. 012221
FILED OCTOBER 24, 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 was held on August 6, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2001 unless otherwise noted), and that the claimant did not have disability.

The claimant appealed, emphasizing medical reports that support his position and inconsistencies in the respondent's (carrier) witnesses' statements. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a laborer. The claimant testified that on _____ at about 8:00 or 8:30 a.m. while carrying an aluminum panel, he misstepped, his foot twisted, and he "felt a sharp pain in [his] back." The claimant said that he went to his union steward, JB, told him that he had hurt his back and asked JB to "pop" his back. JB's testimony was that shortly before work started, as JB was opening the "game box," the claimant came to him complaining of low back pain and asked JB to pop his back. JB's version is supported by a coworker, SL, who testified that he saw JB "popping" the claimant's back before work. Both the claimant and JB agree that the claimant came to JB at about 8:00 a.m. complaining of back pain and that the claimant left work shortly thereafter to go to the doctor.

The claimant was seen in a hospital emergency room on _____ at about 10:00 a.m. where he was diagnosed with a lumbar strain and taken off work for three days. On _____, the claimant came to work and again complained of back pain and was sent to (clinic), where he was diagnosed with a lumbar strain and released to light duty. Subsequent diagnostic testing and an MRI appear to establish that the claimant has a herniated disc at L4-5 and a disc bulge at L5-S1. The key to the case is whether the claimant sustained the injury at work the morning of _____.

The hearing officer commented:

The issue of credibility was pivotal in sorting the facts of this case. After a review of the entire record, it is determined that the Claimant did not establish that his back pain and problems were due to his work-related activities on _____. The credible evidence tends to show that the Claimant complained of low back pain on _____ before he commenced his work activities and in the presence of several co-workers. He later left work without mentioning a work-related injury to [JB] or anything

about an incident caused by misstepping. Under this state of facts, the Claimant did not prove that he sustained a compensable injury on _____.

Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge