

APPEAL NO. 013065
FILED JANUARY 28, 2002

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 November 20, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable right inguinal hernia injury on _____, and that the claimant had disability beginning July 30, 2001, and continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the hearing officer's decision of compensability and disability is so against the great weight and preponderance of the evidence as to be unfair and manifestly unjust. The claimant filed a response urging affirmance.

DECISION

Affirmed.

The claimant testified that he was employed by the employer as an elevator mechanic at a construction site. He stated that on _____, he was injured when he moved some counterweights that were used in the operation of the elevator and he felt a sharp pain in his groin. The claimant reported the injury to his supervisor and construction superintendent that same day. The medical reports in evidence indicated that the claimant was diagnosed with a right inguinal hernia. The claimant testified that he did not show up to work the next day, _____, because he had a court hearing to attend. The claimant stated that he was terminated from his employment because, during his absence on _____, the elevator was operated by an unauthorized person in violation of the employer's safety policy. On October 1, 2001, the claimant and the employer signed a "Weekly Income Claim Form" in which each party acknowledged that the claimant sustained a work-related injury on _____. The claimant testified that the Weekly Income Claim Form provided replacement income for him and that he agreed to repay the replacement income to the union if the injury was found compensable. On November 6, 2001, the construction superintendent signed an affidavit in which he denied that the injury was work related. The carrier contends that the claimant's workers' compensation claim was filed in retaliation against the employer for terminating the claimant from his employment.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The hearing officer was persuaded by the claimant's testimony and the documents in evidence that he sustained a compensable injury. The hearing officer comments that he discounted the construction superintendent's affidavit in that "the information he provided on the 'Weekly Income Claim Form' [is] more credible and essentially dispositive of the issue of whether the Claimant sustained a compensable injury."

The hearing officer did not err in determining that the claimant had disability

beginning July 30, 2001, and continuing through the date of the CCH. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wages. The claimant testified that he was unable to work due to the hernia injury.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). When reviewing a hearing officer's decision for factual sufficiency of the evidence we will reverse the decision only if it is so contrary to 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer on injury or disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge