APPEAL NO. 022411
FILED OCTOBER 29, 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 was held on August 28, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable repetitive trauma injury on _____; that because the claimant did not have a compensable injury the claimant, by definition, cannot have disability; and that the claimant failed to timely notify his employer of the claimed injury pursuant to Section 409.001.

The claimant appeals, basically on sufficiency of the evidence, and alleging an injury "lifting a box of coffee [when he] felt a sharp pain in [his] lower back." The claimant alleges that his date of injury pursuant to Section 408.007 was November 16 1998. The respondent (carrier) responds urging affirmance.

DECISION

Affirmed.

The evidence is totally conflicting. The claimant, in his testimony and appeal, seemed to be alleging a specific injury lifting a box of coffee on _____. The pain was apparently severe enough that he had to go to the emergency room on October 4, 1998. The claimant then saw an orthopedic surgeon on October 5, 1998. The doctor diagnosed an acute lumbar strain and in a follow-up report of November 16, 1998, comments on "repetitive long term trauma to the back" and that the claimant works part time "doing marble and tile work which involves repetitive bending and lifting" (denied by the claimant). There was no mention of lifting a box of coffee in the doctor's reports. The claimant reported his injury to the employer in a letter dated November 30, 1998. The claimant was eventually diagnosed with a grade I degenerative spondylolisthesis at L5-S1.

With the evidence in conflict it is the hearing officer who is charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Section 410.165(a) provides that the hearing officer, 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. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the thier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge