

APPEAL NO. 023278
FILED JANUARY 29, 2003

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 November 22, 2002. The hearing officer determined that the appellant's (claimant) _____, compensable lumbar sprain/strain injury does not include a herniation at L5-S1, and that the claimant did not have disability. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that the hearing officer committed reversible error by denying his request for a subpoena duces tecum, which was submitted on October 31, 2002, and denied on November 4, 2002. Upon review of the record, we find that at the hearing, the claimant failed to reurge his request for the subpoena, enter an objection to the hearing officer's denial of the subpoena, or request a continuance to further develop the evidence. As such, the claimant has waived this argument on appeal.

The claimant had the burden to prove that his _____, compensable injury includes a lumbar herniation at L5-S1 and that it resulted in disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent-of-injury and disability determinations are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. 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 **SERVICE LLOYD'S INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Daniel R. Barry
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge