

APPEAL NO. 030742
FILED MAY 6, 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 (CCH) was held on February 14, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appeals the hearing officer's determinations on sufficiency of the evidence grounds and the respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that he had sustained an injury to his neck and lower back while helping to lift two aluminum bleachers over his head and loading them into a truck while working for the employer on _____. The claimant testified that he immediately told his supervisor of the injury and was placed on light duty until the claimant could no longer stand the pain and began treating for the injury at an emergency room in a local hospital on August 14, 2002. The claimant testified that he could not work on August 14, 2002, and reported to work on August 15, 2002, with a doctor's notice that he was on medication. Evidence reflects that the claimant's supervisor would not allow the claimant to resume working until he was seen by the employer's doctor. The claimant was terminated on August 19, 2002, for missing work during his 90-day probationary period. The claimant's supervisor testified that the claimant never informed the supervisor that the claimant suffered an injury and that the supervisor never placed the claimant in a light-duty job. The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on August 20, 2002 and the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on August 27, 2002. The carrier presented evidence to support its assertions that the claimant had no work-related injury or disability; that the claimant filed a retaliation claim; and that he did not report an alleged injury until after he was terminated from employment.

The hearing officer did not err in reaching the complained-of determinations. The injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could find, as he did, that the claimant did not sustain an injury in the course and scope of his employment, as asserted by the carrier in its TWCC-21. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

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

**PRENTICE HALL CORPORATION SYSTEMS INCORPORATED
800 BRAZOS
AUSTIN TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge