

APPEAL NO. 031747
FILED AUGUST 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on May 12, 2003, with the record closing on May 19, 2003. With respect to the issues before her in (docket 1), the hearing officer determined that: (1) the date of injury (DOI) is (date of injury for docket No. 1); (2) the appellant/cross-respondent (claimant) did not sustain a compensable injury; (3) the claimant did not timely report an injury; and (4) the claimant had no disability.

With respect to the issues before her in (docket 2), the hearing officer determined that: (1) the DOI is (date of injury for docket No. 2); (2) the claimant did not sustain a compensable injury; (3) the claimant timely reported to the employer that he had sustained a hernia on (date of injury for docket No. 2); and (4) the claimant had no disability.

The claimant appealed the hearing officer's determinations that were not favorable to him based on sufficiency of the evidence grounds. The respondent/cross-appellant (carrier) appealed the hearing officer's timely notice determination in docket 2. The claimant and the carrier responded to the other party's appeal. The hearing officer's determinations on the DOIs have not been appealed and therefore, have become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that he sustained a hernia injury on (date of injury for docket No. 1), when he lifted a 90-pound jackhammer in the course and scope of his employment. There is conflicting evidence on whether the claimant sustained or reported an injury to his employer. The claimant testified that he returned to work light duty on September 29, 2002, however, light duty was not available and he continued to work his regular duties. The claimant testified that he sustained neck, low back, and right shoulder injuries and worsened his previous hernia injury on (date of injury for docket No. 2), when he attempted to hitch light tower equipment that had rolled out onto a driveway. The claimant testified that he reported his new injuries to the dispatcher. There is conflicting evidence on whether the claimant sustained or reported any injuries to his employer. The claimant contends that he has disability from October 5, 2002, to the date of the CCH.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10); that he gave timely notice of injury to the employer pursuant to Section 409.001; and that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues in each

separate case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer commented in the Statement of Evidence that she was not persuaded by the claimant's testimony. We conclude that the hearing officer's determinations on the disputed issues in each separate case are supported by sufficient evidence and that they are 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 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY 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.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge