

APPEAL NO. 031949
FILED AUGUST 28, 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 March 3, 2003, with the record closing on June 23, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that, because the claimant had not sustained a compensable injury, the claimant did not have disability.

The claimant appealed on sufficiency of the evidence grounds reiterating much of his testimony from the CCH. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, who worked at a plant farm, testified how, after putting down a plant, he stood up and hit his back on a crank or steel bar on _____. The claimant disputes that he had been involved in a similar incident on March 27 or 28, 2002. The claimant called the employer the next day on _____, reported the injury and stated that he would not be in to work. The claimant's employment was terminated on April 5, 2002, for excessive absenteeism. The claimant first sought medical attention for his claimed injury on June 28, 2002. The medical evidence is conflicting. Some notes do indicate that the claimant's "lumbar radiculopathy is caused by a work related injury" however the carrier required medical examination doctor comments that the MRI scans and x-rays do not show any demonstrable nerve injury, notes the presence of several Waddell's signs, and concludes that the claimant's current complaints appear to be unrelated to any incident that may have happened in _____. The hearing officer, as indicated in her Statement of the Evidence, was clearly bothered by the claimant's delay in seeking treatment, notwithstanding the claimant's assertion that he trivialized the injury.

The testimony and medical evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In that we are affirming the hearing officer's determination that the claimant did not sustain a compensable injury, the claimant cannot by definition in Section 401.011(16), have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC.** and the name and address of its registered agent for service of process is

**RONALD I. HENRY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75230.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge