

APPEAL NO. 032705
FILED DECEMBER 2, 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 September 16, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable (low back) injury on _____, and that the claimant did not have disability.

The claimant appealed, basically on sufficiency of the evidence grounds, contending that he had sustained a new and distinctly different injury on _____, and had disability. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant, a warehouse man, testified that he sustained a low back injury on _____, pulling a sofa from stock. The carrier presented evidence that the claimant had occasionally been seeing a chiropractor and had complaints of being "down in his back" since 2001. Much of the testimony and recorded statements gave conflicting or contradicting evidence. Basically this case comes down to whom to believe, the claimant, or the employer's witnesses. The hearing officer's Statement of the Evidence gives a fairly detailed summary of the testimony and medical evidence. The hearing officer commented that, "the claimant's testimony of a sudden onset of pain while lifting a sofa on _____, is not credible."

The issues of injury and disability presented questions of fact for the hearing officer to resolve. Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is 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, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge