

APPEAL NO. 032745
FILED NOVEMBER 26, 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 October 2, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on (alleged date of injury), and that he did not have disability. The claimant appeals these adverse determinations and argues that the hearing officer erred by not allowing modification of the issues, or alternatively, the addition of an issue. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant argues on appeal that the hearing officer erred in refusing to grant his request to modify the issues or alternatively to add an issue. The claimant contends that two incidents occurred during the course and scope of the claimant's work for the employer: a lifting incident on _____, and an incident on (alleged date of injury). For the (alleged date of injury), incident, which is in issue at the CCH, the claimant testified that he was performing his job duties when a trash cart fell on him. In evidence was the claimant's response to the benefit review conference (BRC) report in which the claimant requested that the issues be modified as follows: "(1) whether Claimant sustained an injury, including aggravation injury, in the course and scope of employment and, if so, (2) what is his date of injury." The claimant requested alternatively that an additional dispute be added concerning whether the claimant sustained an injury in the course and scope of employment on _____, and if so, what are the periods of disability. Section 410.151(b) provides, in part, that an issue not raised at a BRC may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not requesting the issue at the BRC. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7) provides that additional issues may be added by a party responding to the BRC report no later than 20 days after receiving it, by unanimous consent in writing no later than 10 days before the hearing, and on the request of a party if the hearing officer finds good cause. The BRC in this case was held on January 6, 2003, and although there was some evidence that the January 2002 incident was discussed at the BRC, the reported issues were: (1) Did the claimant sustain a compensable injury on (alleged date of injury)? and (2) Did the claimant have disability from May 30, 2002, through June 26, 2002, and from August 2, 2002, through the present resulting from an injury sustained on (alleged date of injury)? The claimant's response to the BRC requesting the change in issues was dated August 22, 2003. The hearing officer determined that the claimant did not establish good cause for adding or modifying the requested issues. She noted that there were two separate claim files, with two claimed separate mechanisms of injury and two separate injuries.

We perceive no abuse of discretion on the part of the hearing officer denying the motion to modify or alternatively to add the additional issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985); Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the issue of whether the claimant sustained a compensable injury. 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. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant did not sustain a compensable injury 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 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**PE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge