

APPEAL NO. 033209
FILED JANUARY 9, 2004

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 October 30, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that he did not timely report his alleged injury to his employer; that the respondent (carrier) did not waive its right to contest compensability; and that the claimant did not have disability. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

Initially, we will consider the hearing officer's determination that the carrier did not waive its right to contest compensability in this case. The hearing officer determined that there was no damage or harm to the physical structure of the claimant's low back. The hearing officer was acting within her province as the sole judge of the weight and credibility of the evidence under Section 410.165(a) in so finding. As the fact finder, the hearing officer was free to reject the claimant's testimony and the evidence from Dr. G tending to demonstrate that there was an injury within the meaning of the 1989 Act to the claimant's low back. Her determination in that regard is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Because the hearing officer's determination that there is no damage or harm to the physical structure of the claimant's low back is affirmable, her determination that the carrier did not waive its right to contest compensability is likewise affirmable under the reasoning of Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.).

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and that he did not timely report his alleged injury to his employer. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer simply did not believe the claimant's testimony and the evidence tending to demonstrate that he sustained damage or harm to the physical structure of his low back lifting sandbags at work and that he reported his injury to his employer within the 30-day period provided for doing so in Section 409.001. The

hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge