APPEAL NO. 033274
FILED JANUARY 21, 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 November 13, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that because he did not have a compensable injury he could not have disability.

The claimant appealed, principally on sufficiency of the evidence basis emphasizing evidence in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is relatively undisputed that on the afternoon of _____, as the claimant, an air conditioning technician, and a coworker were moving a compressor, estimated to weigh between 100 and 200 pounds, up some stairs, the dolly handle broke and the entire weight of the compressor was shifted to the claimant. The coworker testified about the incident and stated that the claimant did not complain of an injury or appear hurt. The claimant finished the shift. The claimant testified that he was in severe pain, went home and was unable to sleep. A statement in evidence as a carrier exhibit indicates that the claimant was "in obvious pain" the afternoon of _____. The circumstances of the claimant going to work the next morning are somewhat disputed but it is undisputed that the claimant's supervisor, the service manager, laid the claimant off based on the claimant not getting enough hours. Both the service manager, and the operations coordinator, who took the claimant home, testified that the claimant made no mention of an injury, being in pain, or appearing injured. On Monday February 24, 2003, the claimant returned to the employer in obvious pain and reported the claimed injury. The claimant first saw a doctor on March 3, 2003, and was taken off work.

The hearing officer commented that the described incident "could certainly have caused an injury" but questioned that if the claimant was in such pain why he had not reported the injury until several days later. The claimant contended that he did not do so because he "was not sure of the scope of injury" and that the employer had told the employees not to report so many injuries. In any event, questions of whether the claimant sustained a compensable injury, presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer could believe all, part or none of the testimony of any witness (Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ)). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the

evidence and deciding what facts the evidence had established. 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). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Because we are affirming the hearing officer's determination of no 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 **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge