

APPEAL NO. 040737
FILED MAY 20, 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 March 11, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability.

The claimant appealed, contending that the hearing officer had not taken into account her medical evidence in support of her claimed injury. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant, a concrete construction worker, asserts that she sustained a compensable back injury lifting a cement chute up to her supervisor. Testimony from the job superintendent and statements of the supervisor and a coworker contradict the claimant's testimony. The medical evidence assesses a lumbar strain (one other report includes a cervical strain and another a thoracic strain) and degenerative disc disease (the claimant is 47 years old).

The claimant has the burden to prove that she sustained a compensable injury. In this case there was conflicting evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the fact finder resolves the conflicts and determines what facts have been established. The medical evidence cited by the claimant diagnoses principally a lumbar strain and degenerative disc disease, apparently based on the history of a lifting injury given by the claimant. The hearing officer is not bound by medical evidence which is dependent on the history given by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are 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).

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 **HARTFORD UNDERWRITERS INSURANCE 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge