

APPEAL NO. 040835
FILED MAY 24, 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 29, 2004. The hearing officer determined that the appellant's (claimant) date of injury was _____; that the claimant did not sustain a compensable injury, including a low back injury, on _____, or any other alleged date; and that because the claimant did not have a compensable injury, he did not have disability.

The claimant appealed, reiterating his position that he injured his back on (alleged date of injury), pushing a rack and that he has disability. Respondent 1 (carrier 1 and respondent 2 (carrier 2) respond, urging affirmance.

DECISION

Affirmed.

The claimant, a materials handler, asserts that he sustained a compensable low back injury on (alleged date of injury), pushing a rack. The claimant had sustained a compensable low back injury in 1998 and an MRI performed in conjunction with that injury showed a 3 mm disc protrusion at L4-5 and 4 mm disc protrusion at L5-S1. An MRI performed on January 15, 2004, in conjunction with the current claim, showed a 2 mm disc protrusion at L4-5 and a 3 mm disc protrusion at L5-S1. There is conflicting testimony and evidence whether the claimant said he hurt his back, or was sore, two weeks before (alleged date of injury), when he reported the injury, and whether the claimant said the soreness started two days after he took his preemployment physical on July 28, 2003. Statements of two coworkers were indefinite.

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. In that we are affirming the hearing officer's determination that the claimant did not sustain a compensable injury, the claimant cannot by definition in Section 401.011(16) have disability. 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 insurance carrier 1 is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

The true corporate name of insurance carrier 2 is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge