APPEAL NO. 950241

On December 15, 1994, and January 18, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The appellant (carrier) disagrees with the hearing officer's determinations that the respondent (claimant) sustained an injury to his right leg and back in the course and scope of his employment on (date of injury); and that the claimant has had disability from May 26, 1994, through the date the hearing was closed, January 18, 1995. Neither party appealed the hearing officer's determination that the claimant's average weekly wage is $200.00. The claimant requests affirmance of the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant was involved in an accident at work on (date of injury), when a small pickup truck rolled down an incline and hit him. The claimant was working as a security guard at the time of the accident and he testified that the back of the truck struck him from behind at about his beltline, knocked him over a battery charger and rolled over him. He immediately reported the accident but refused medical attention. Carrier's witnesses testified that the claimant said he was fine after the unwitnessed accident and that the claimant reported that the truck had just brushed or bumped into him. On December 19, 1993, the claimant reported that he had no physical disability. The claimant continued to work until May 25, 1994, and the carrier's witnesses testified that he gave no indication that he was injured. The claimant gave contradictory testimony regarding pain after the accident. He first testified that he did not have back pain until around May 28, 1994, when he could not get out of bed, but later testified that he had pain while working after the accident. He was taken by ambulance to the hospital on May 29, 1994, where he complained of back pain and was prescribed pain medication. The claimant testified that he has been unable to work, and has been in "no shape to work" since about May 25, 1994. The hospital diagnosed low back pain and reported that the claimant would need bedrest until June 1, 1994. An MRI scan of the lumbar spine done on July 13, 1994, revealed spinal stenosis, hypertrophic changes, bulging discs, and ventral disc herniations. On November 16, 1994, the claimant was examined by (Dr. S) at the request of the Texas Workers' Compensation Commission and his impression was that the claimant had an injury on (date of injury), which caused him to have severe lumbar pain with radiation to the lower extremities and numbness of the right thigh. In addition, he reported that the claimant has severe osteoarthrosis of the lumbar spine. He also reported that he felt the claimant is unable to work. On January 17, 1995, Dr. S stated that while the claimant had pre-existing lumbar problems, the trauma he experienced on (date of injury), "certainly could have accelerated and aggravated a problem that had already been previously there."

The carrier contends that the claimant's accident on (date of injury), did not cause injury or disability and it challenges the hearing officer's findings and conclusions that the

claimant sustained a back and right leg injury in the course and scope of his employment on (date of injury), when a pickup truck struck him, and that he has had disability as a result of that injury from May 26, 1994, through January 18, 1995. The carrier contends that the findings, conclusions, and decision on injury and disability are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The claimant has the burden to prove that he sustained an injury in the course and scope of his employment and that he has disability. Generally, in workers' compensation cases the issues of injury and disability may be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The immediate effects of an original injury are not fully determinative of the nature and extent of the compensable injury. Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ). The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer can believe all, part, or none of the testimony of any witness, and resolves conflicts in the evidence and determines what facts have been established from the conflicting evidence. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact even if the evidence would support a different result. Appeal No. 950084, *supra*. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's findings, conclusions, and decision are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge