APPEAL NO. 950244

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas, on December 15, 1994, before (hearing officer), hearing officer. The appellant (claimant), who is the claimant, was a truck driver for (employer), and he alleged he injured his right leg on (date of injury), and had the inability to obtain and retain employment (disability) equivalent to his preinjury wage due to this injury beginning October 14, 1991, until March 9, 1992. The respondent (carrier) disputed this, and also maintained that he failed to notify his employer of his injury within thirty days.

The hearing officer determined that claimant had not proven that he was injured, and that he lost work because of a chronic venous insufficiency that he failed to prove was caused or exacerbated at work. The hearing officer further found that he had not given notice within 30 days as required by the Act, and that he did not have disability due to a compensable injury.

The claimant generally appeals the hearing officer's findings of fact on these issues, stating that the evidence establishes the contentions made by claimant. The carrier responds that this appeal should be stricken as insufficient under the Act, and further that the hearing officer's decision is supported by the record in the case.

DECISION

We affirm the hearing officer's decision and order.

We will consider the appeal as raising the sufficiency of the evidence to support the hearing officer's decision.

Claimant said he injured his right thigh on (date of injury), when he was tightening up the lug nuts on the wheel of his truck. He stated that it was required of drivers to regularly check the nuts to make sure they did not "work" loose. However, claimant also testified that new tires had been put on his truck that day. Claimant said that the lugs nevertheless "appeared loose", and that as he was tightening them the wrench slipped and hit him in the thigh, bruising it.

Claimant contended he reported the injury that day to his supervisor, (Mr. H). Claimant continued to work, and stated that the pain became so great that he left work in October 1991. He had surgery on his right ankle. Claimant stated that he first realized his condition was work related when his doctor gave him a letter to that effect on November 8, 1991, which he took to his employer. Claimant was released and returned to work on March 9, 1992.

(Mr. C), the loss control coordinator for the employer, stated that the first the employer knew that claimant was contending a work-related injury was on November 8, 1991. He

stated that claimant had been put on an illness-related sick leave prior to that. Mr. C stated that claimant initially told him that he reported the injury to a dispatcher, (Mr. M), who was not a supervisor. Mr. C said he nevertheless asked Mr. H if he knew about an injury and Mr. H did not recall claimant reporting one to him. A statement from Mr. M indicated that he could not recall such a conversation with claimant, and further that it was the procedure for any sickness or illness to be reported to Mr. H rather than to him.

Medical records in evidence are as follows:

- October 18, 1991: Hospital records of wound care consultation. History reports that lesions began in 1989 (claimant denied that this was the case). History also noted that claimant's occupation required him to sit for long periods of time.

- November 1, 1991: Dr. S wrote that claimant had a chronic venous disease which led to ulcerations in both legs. Dr. S stated that he felt claimant's work had been a producing cause that "excited and contributed to the injury and the condition."

- November 23, 1991: (Dr. I) wrote that claimant had a varicose ulcer relating to venous insufficiency that did not directly result from his work. This opinion was requested by Mr. C on November 15th.

- July 29, 1994/ (Dr. O), consultant for the carrier, opined that claimant's medical records and "the literature" indicated no causal relationship between work and his venous insufficiency.

None of the records indicated that claimant reported a traumatic blow to his right thigh.

There is sufficient evidence to support the hearing officer's decision that claimant was not injured while in furtherance of the affairs of his employer. The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers Insurance Ass'n v. Page, 553 S.W.2d 98 (Tex. 1977). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). There are conflicts in the record, but those were the responsibility of the hearing officer to judge. An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support

a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Section 401.011 (16) defines "disability" as: ". . .the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Because there was no compensable injury established, one of the underpinnings of the definition of disability is not present.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That is not the case here, and the record sufficiently supports the hearing officer's decision and order, which we affirm.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge