APPEAL NO. 950340

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 21, 1995, with the record closing on February 3, 1995, in (city), Texas. (hearing officer) presided as hearing officer. The issues at the hearing were:

1.Did the respondent (carrier herein) timely and sufficiently dispute compensability of the claimed injuries.

2.Did the appellant (claimant herein) sustain a compensable injury on (date of injury), to his groin and to his back.

3.Did the claimant have disability resulting form the alleged injuries of (date of injury).

The hearing officer determined that the claimant sustained a compensable injury on (date of injury), to his groin (right testicle), but not to his back; that he had disability from August 27, 1994, through November 6, 1994; and that the carrier timely and sufficiently disputed compensability of these injuries. The claimant appeals arguing that adverse determinations of the hearing officer are not supported by sufficient evidence. The carrier replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

We affirm.

The claimant, who was an electrician's helper, testified that he injured both his right testicle and his back on (date of injury), when he slipped through a ladder and straddled one of the rungs. He said that within 10 hours, the testicle had swollen to the size of an orange and he sought medical care on August 28, 1994, at an emergency room (ER). The claimant described his injury as epididymitis and said the ER physician excused him from work. The next day, he saw (Dr. A), his treating physician, who excused him from work until November 7, 1994. The only medical records in evidence consist of duty excuses from the ER physician and Dr. A who describes the nature of the injury as "urinary." The claimant further testified that he experienced the "sensation of needles" in the groin area and sought treatment from (Dr. T), D.C. According to the claimant, Dr. T told him that nerves in the groin areas can radiate pain to the lower back. No records of Dr. T were offered into evidence. The claimant also said that Dr. T told him not to return to work. The claimant has not worked since the date of the injury and said he first noticed back pain at the time of his injury, but his priority concern at the time was for his testicle. He stated he is not yet pain free.

The parties stipulated that the claimant suffered a compensable injury to his right testicle on (date of injury), and that he had disability as a result of this injury from August 27, 1994, through November 6, 1994.

The claimant completed an "Employee's Notice of Injury or Occupational Disease and Claim for Compensation," TWCC-41, on October 12, 1994. This form was received by the Texas Workers' Compensation Commission (Commission) on October 14, 1994, and listed an injury to the right testicle and back. The carrier completed a "Notice of Refused or Disputed Claim" on October 31, 1994, which was received by the Commission on October 31, 1994. The following were the reasons given for disputing compensability:

1)Claimant sustained no injury in the course & scope of his employment.

2)No medical evidence to sustain disability due to an on the job injury.

3)No causal connection or relationship between clmts condition & an inj sustained @ work.

4)TIBS, IIBS, LIBS & MED Benefits are denied.

There were no witnesses to the injury. Transcriptions of conversations between an adjuster and three supervisors where also in evidence. These related that the claimant had been employed for about two weeks when he was injured. Each stated that the claimant essentially disappeared from the job site on the afternoon of the alleged injuries and was found about an hour later asleep in the parking lot. They thought he may have been dehydrated and gave him water. (Mr. K), the project manager, said he asked the claimant if he was going to file a workers' compensation claim, and the claimant responded "no." (Mr. S), the job superintendent, said he asked the claimant after they found him if something happened to him, and the claimant said "no" and that he just felt bad from an old injury.

The claimant requests review of the following Findings of Fact and Conclusions of Law of the hearing officer "to see if they are supported by sufficient evidence:"

FINDINGS OF FACT

5.Claimant did not sustain a work related back injury on (date of injury).

CONCLUSIONS OF LAW

3.Claimant did not sustain a compensable injury to his back, in addition to the injury to his groin.

4.Claimant sustained disability which began on August 27, 1994, and continued through November 6, 1994.

5.The Carrier did timely contest compensability on or before the 60th day after being notified of the injury and the Carrier's notice did contain sufficient substantive information to properly contest compensability under [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(a)(9) (Rule 124.6(a)(9)].

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether the claimant's injury in this case included his back was a question of fact which could be established by the testimony of the claimant alone if found credible. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided on April 16, 1992. The hearing officer, as fact finder, is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). 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). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). The hearing officer obviously was not persuaded by the claimant that his compensable injury included his back. The back was not mentioned in an ER report in evidence, and even though the claimant insisted in his testimony that Dr. T, his chiropractor, made this connection, there was no supporting evidence to this effect from Dr. T. The hearing officer was not compelled to accept that testimony of the claimant at face value. Having reviewed the record in this case, we are satisfied there was sufficient evidence to support the findings and conclusions of the hearing officer that the claimant's compensable injury included only his groin.

We next turn to claimant's assertion of error in the hearing officer's determination that his disability did not extend beyond November 6, 1994. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Under the 1989 Act, the claimant has the burden of proving that he has disability as a result of a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Whether disability exists as claimed is a question of fact which may be established by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant produced work releases effective through November 6, 1994, and to establish disability relied on his own testimony that he was not

currently pain free and he could not work because of the groin injury and back injury alone or in combination. The hearing officer again was not persuaded by the claimant that he had continuing disability. This was essentially a credibility determination by the hearing officer that the claimant failed to meet his burden of proof on this issue. Under our standard of review, we decline to reverse it on appeal.

Finally, the claimant argues, contrary to the decision and order of the hearing officer, that the carrier's dispute of compensability was not adequate.[1] Section 409.021(c) provides in pertinent part that if a carrier does not contest the compensability of an injury by the 60th day after being notified of the injury, the carrier waives its right to contest compensability. Rule 124.6(a)(9) implements Section 409.021 and provides that the notice of refused or disputed claim shall contain:

> [A] full and complete statement of the grounds for the carrier's refusal to begin payment of benefits. A statement that simply states a conclusion such as "liability is in question," "compensability in dispute," "no medical evidence received to support disability" or "under investigation" is insufficient grounds for the information required by this rule.

As mentioned above, the carrier's TWCC-21 included as reasons for disputing this claim that "Claimant sustained no injury in the course and scope of employment" and "no causal connection or relationship between Clmnts condition and an inj sustained @ work." The hearing officer concluded that these statements gave sufficient substantive information to properly contest compensability. We agree. In Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993, the Appeals Panel stated that we would look to a fair reading of the reasons listed to determine if the notice of refusal or denial is sufficient and, in so doing, compare the language in the case under consideration to similar language in previous decisions. In our opinion, a fair reading of the carrier's dispute language in its TWCC-21 is that it is basing its denial of compensability on the contention that the claimed injury was not work related. The language it used compares favorably to the language "[c]arrier disputes as no evidence of an injury in the course and scope" which we found sufficient to dispute compensability under the 1989 Act and Rule 124.6. Texas Workers' Compensation Commission Appeal No. 931148, decided February 1, 1994. We do not consider the carrier's reasons merely conclusory or uninformative and the claimant in his appeal offers absolutely no rationale or basis as to why this language is not sufficient other than to argue an insufficiency of the evidence when the facts relating to this issue were not fairly in dispute. *See also* Texas Workers' Compensation Commission Appeal No.

[1]The timeliness of this dispute of compensability under Section 409.021(c) was an issue at the CCH, but the findings of fact on which the hearing officer based his conclusion of law that the dispute was timely have not been appealed and therefore have become final. *See* Texas Workers' Compensation Commission Appeal No. 94588, decided June 20, 1994. Indeed, there could be no other conclusion given the undisputed evidence that the TWCC-21 was filed within 17 days of the receipt of the written notice of claim (TWCC-41).

94977, decided September 6, 1994, and cases cited therein, for additional discussion of the adequacy of a dispute of compensability. Accordingly, we find no error in the hearing officer's decision and order that the carrier timely and adequately disputed compensability.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge