APPEAL NO. 000538

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 14, 2000. The issues at the CCH were whether the appellant/cross-respondent (claimant) sustained a compensable injury to his back on _____; whether the claimant had disability; and whether the claimant was employed by (employer) at the time of the alleged injury. The hearing officer determined that the claimant did not sustain a compensable injury; that the claimant did not have disability; and that the claimant was an employee of the employer at the time of the alleged injury. The claimant appeals, contending that he was injured in the course and scope of his employment and has disability. The respondent/cross-appellant (carrier) appeals, contending that the claimant was not an employee of the employer at the time of the alleged injury. Both parties respond to the other=s appeal by reciting facts in favor of the appealed issues.

DECISION

Affirmed.

The evidence presented was conflicting and contradictory. The claimant worked for the employer installing heating and air-conditioning equipment. The claimant testified that on _____, he reported to work; was walking through the shop to obtain a fan that he had left in a service van; tripped on a box; and fell, injuring his right hip and lower back. The claimant said that he immediately reported the accident to (Ms. JH), the office manager, and was fired approximately 10 minutes later by (Mr. SH), his supervisor. According to the claimant, he did not know that he was fired prior to _____; he did not give notice to the employer that he was quitting his job; and he did not remember being advised by Ms. JH on August 17, 1999, that it was his last day of work. The claimant sought medical treatment with Dr. B on _____. Dr. B diagnosed lumbosacral and thoracic sprain/strain and took the claimant off work. The claimant asserts that he has had disability from _____, through the date of the CCH.

Ms. JH testified that on August 10, 1999, Mr. SH told her that the claimant had given his notice. Ms. JH said that at the end of the workday on August 17, 1999, she told the claimant that he was no longer employed because they had accepted his termination; the claimant told her that he did not quit, refused to sign paperwork, and said that he would come to work the next day. Ms. JH testified that on the morning of _____, Mr. SH said that the claimant was rescinding his resignation and she told Mr. SH that they would then fire the claimant.

Mr. SH testified that the claimant gave notice that he was terminating his employment on August 10, 1999; it was accepted; and one or two weeks notice was discussed. According to Mr. SH, he had a heated discussion with the claimant on the morning of _____, and told the claimant that he was no longer employed. Mr. SH testified that the claimant asked for and was given permission to retrieve his battery charger and his drill, and the claimant=s

alleged injury occurred at a location 100 feet away from where such items were located. Both parties presented witness statements to support their respective positions.

The claimant's burden to prove that he sustained a compensable injury included the burden of proving that he was an employee of employer at the time of his injury. Section 401.012(a) defines "employee" to mean a "person in the service of another under a contract of hire, whether express or implied, or oral or written." Similarly, Section 401.011(18) defines "employer" to mean a "person who makes a contract of hire. . . ." In Texas Workers' Compensation Commission Appeal No. 94825, decided August 4, 1994, we stated:

> The rule as stated by Texas courts is that once an employment relationship has been terminated, either by the resignation of the employee or by the employee being fired, an injury incurred at the job site or while leaving the job site subsequent to the termination is not an injury sustained in the course of employment, within the meaning of the workers' compensation law. Ellison v. Trailite, Inc., 580 S.W.2d 614 (Tex. Civ. App.-Houston [14th Dist.] 1979, no writ). An exception to this rule occurs, however, when the employee is required, or reasonably believes that he is required, to remain at or to return to the employer's premises for his final paycheck or to take care of some other duty incidental to the termination. INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985).

The hearing officer concluded that the claimant was employed by the employer at the time of the alleged injury. Although the hearing officer did not make a specific finding of fact to support his conclusion, the hearing officer states that the claimant was given permission to reenter the warehouse to collect his personal equipment. From this statement, we can infer that the hearing officer determined that the claimant met the exception to the above cited rule because he was taking care of a duty incidental to the termination.

Whether the claimant sustained an injury on _____, was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. 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. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He resolved contradictions in the evidence against the claimant. The hearing officer gave more weight to the testimony and witness statements indicating that the claimant was seen laying on the floor not once, but twice, and concluded that the claimant did not injure any part of his body when he allegedly fell in his employer=s warehouse on _____. 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, 635 (Tex. 1986). We find there was sufficient evidence to support the determinations of the hearing officer that the claimant was an employee of the employer at the time of the alleged injury and did not sustain a compensable injury on _____.

The claimant appealed the hearing officer's finding of no disability. ADisability@ 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). Since we have found the evidence to be sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge