

APPEAL NO. 980011

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 18, 1997, a hearing was held. She (Hearing Officer) determined that appellant (claimant) did not sustain a compensable hernia injury at work; that he did not timely report his alleged injury; and that he did not have disability. On appeal, claimant contends that the evidence shows he sustained a hernia injury at work, that he had disability, and that he timely reported to his employer, (employer), that he had a work-related injury. Respondent (carrier) responds that sufficient evidence supports the hearing officer's decision.

DECISION

We affirm.

Claimant first contends that the hearing officer erred in determining that he did not sustain his hernia at work. He asserts that the medical evidence shows he had a hernia. He contends that he injured himself at work and that he went to the doctor for treatment.

A claimant has the burden to prove that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that on _____, he was loading five-gallon water bottles into a truck when he felt a pull on his left groin area. He said he typically loaded 40 bottles into a truck six times per day. Claimant said that he continued to work after he felt the "pull." Claimant said he had never had this sensation or pain before. He said he continued to work that week, that he saw (Dr. GA) on January 14, 1997, and that Dr. GA said it was probably a hernia. He said Dr. GA gave him a paper that said not to lift heavy things, that he gave it to (Mr. Q) at work, that he told Mr. Q that the doctor said it was probably a hernia, that Mr. Q said they would talk later, and that he was given light-duty work to do for 10 days. He said he was terminated in May 1997 because there was no work for him to do.

Claimant said he has not had surgery, that the hernia is very painful, and that he cannot work. There was evidence that claimant gave differing or inconsistent dates of injury and that he did not mention his hernia or seek medical treatment again until after his employment was terminated. Claimant said that he picked up aluminum cans and helped a house painter after he left his job with employer.

In a January 14, 1997, off-work slip, Dr. GA stated:

[Claimant] has a right groin pain due to lifting. Recommend 10 days of no lifting just to avoid developing a rt. inguinal hernia. He should be well in 10 days.

In a June 24, 1997, Initial Medical Report (TWCC-61), Dr. GA said under "assessment," "no inguinal hernia felt - tenderness to rt groin noted." In a July 2, 1997, letter, (Dr. MI) stated that claimant was injured in January 1997 at work and that he suffers from a right inguinal hernia. In a July 8, 1997, letter, (Dr. VI) stated that claimant was injured in January 1997 at work and that he suffers from a right inguinal hernia. In a July 11, 1997, letter, Dr. GA said that, in his opinion, claimant did have "a hernia caused by his heavy lifting and was [sic] not an obvious one at the time [he examined] him [in January 1997]." In a July 30, 1997, letter, Dr. GA said claimant had a hernia in January 1997 that "now has become large," and that "he also complained of pain to his right shoulder which is a tear to his rotator cuff. This is also an occupational injury that manifested itself on _____."

In this case, it was not disputed that claimant had a hernia. However, the fact of injury does not necessarily mean that the injury occurred on the job. See Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ), in which the fact finder believed part of the claimant's testimony about the existence of an injury, but not that it happened on the job. The hearing officer was the sole judge of claimant's credibility and she stated that she did not find his testimony credible. We have reviewed the evidence regarding claimant's alleged injury and we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant asserts that he cannot work because of the hernia and that he does have disability. However, because there is no compensable injury, there can be no disability under the 1989 Act. See Section 401.011(16).

Claimant next contends that the hearing officer erred in determining that he did not timely report his alleged hernia injury. He asserts that he reported the hernia injury to Mr. Q on January 15, 1997. Generally, a claimant must report an injury to his employer within the requisite 30-day period, Section 409.001, unless there is good cause for the failure to timely report the injury. Section 409.002(2).

Claimant testified that he did report his alleged injury and the fact that he contended it was work related. However, the hearing officer indicated in the decision and order that she did not find claimant's testimony in this regard to be credible. The hearing officer was entitled to weigh the evidence, judge its credibility, and resolve this fact question against the claimant. Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992. In light of our standard of review, we will not disturb the hearing officer's determination.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Christopher L. Rhodes
Appeals Judge