

APPEAL NO. 980127

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 December 10, 1997, with hearing officer. The issues at the CCH were whether appellant (claimant) sustained a compensable injury to his shoulder on _____, and whether he had disability from that alleged injury. The hearing officer determined that claimant did not sustain a compensable shoulder injury and that he did not have disability, from which determinations claimant appeals. Respondent (carrier) asserts that the evidence supports the hearing officer's determination.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that he did not sustain a compensable shoulder injury. He asserts that the evidence shows that his shoulder injury did happen at work, that the medical evidence showed he had a torn rotator cuff, and that if his shoulder had already been injured before _____, he would not have been able to continue driving his bus. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A claimant may meet his burden to establish an injury through his own testimony, if the hearing officer finds the testimony credible. See Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The 1989 Act defines "injury" as damage or harm to the physical structure of the body and as disease naturally resulting from the damage or harm. Section 401.011(26).

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 he injured his shoulder when he reached behind him to retrieve an item and twisted his shoulder on _____. He said he felt pain in his shoulder and that he reported it to his supervisor, (Mr. LU), the next day. He said he saw his doctor and that he has chosen to have shoulder surgery. He denied that he had ever told Mr. LU that he had shoulder pain before _____. Mr. LU testified that claimant had come into his office before _____, and groaned and complained that he could not lift his arm above shoulder level. Mr. LU said that he told claimant on _____, that he would

have to report claimant's prior shoulder complaint along with his current report of injury, and that claimant responded that he would just deny that he had ever mentioned shoulder pain to Mr. LU in the past. An October 2, 1997, MRI report stated that claimant had a torn rotator cuff.

The hearing officer was the sole judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained a shoulder injury on _____, and resolved this issue against claimant. We will not substitute our judgment for hers in that regard because 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*. Given our standard of review we will not overturn the hearing officer's decision.

Claimant contends the hearing officer erred in determining that he did not have disability. Because claimant did not have a compensable shoulder injury, he did not have disability. Section 401.011(16).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge