

APPEAL NO. 980167
FILED MARCH 11, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On December 11, 1997, a contested case hearing was held. The (hearing officer) determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from _____, to November 11, 1997. The appellant (carrier) appeals, challenging the sufficiency of the evidence. Claimant responded that we should affirm the hearing officer's decision.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury on _____, is not supported by sufficient evidence. Carrier asserts that it was unusual for claimant to walk and inspect the yard where he was injured, that claimant had no legitimate purpose for climbing on the equipment from which he allegedly fell, that he gave inconsistent statements regarding the cause of his fall, and that there was evidence showing that claimant had allegedly engaged in activities that showed he was not a credible witness.

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). 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). 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.

Our standard of review for challenges to the sufficiency of the evidence, the law regarding claimant's burden of proof, and other applicable law is set forth in Texas Workers' Compensation Commission Appeal No. 960672, decided May 16, 1996 (citing Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)).

Claimant testified that on _____, he was walking out in employer's yard, that he climbed up on a piece of equipment which was parked out by itself, that the cab door started to swing, that he thinks he fell due to wind, and that he ended up on the ground. Claimant said he normally walks through the yard daily. He said he was taken to the emergency room and was later treated by (Dr. SM). Claimant said he returned to work on November 11, 1997, for a company in (state 2) and that he now makes about \$64,000 per year.

Dr. SM testified that he knew claimant as a casual acquaintance before his injury, that he talked to claimant's neurologist at the emergency room, that he aided claimant in getting to his car from the emergency room, and that he treated claimant for his injury. Dr. SM said when he saw claimant after the accident, claimant was not ambulatory, he showed outward signs of pain, he had a white pallor, that he looked like "death warmed over," and that he seemed very distressed. He said the injury appeared "real" and that claimant needs further treatment. Dr. SM said he took claimant off work, that he last saw claimant in October 1997, and that he thought claimant was still off work at that time.

A June 23, 1997, report from (Dr. RA), stated that claimant was diagnosed with a post-traumatic cervical and lumbar strain, that there were radicular features, and that it was hard to obtain a motionless MRI because claimant was suffering from severe muscle spasm. A June 23, 1997, report from (Dr. KO) said that claimant had a small herniation at L4-5 with no evidence of foraminal compression, that the diagnosis was cervical and lumbar sprain, and that claimant was unable to return to work. A July 1997 MRI report signed by Dr. RA stated under "impression" that claimant had cervical and lumbar radiculopathy and, in the report, Dr. RA said that the lumbar MRI "demonstrated evidence of L4-5 disc herniation." A July 1997 EMG report signed by Dr. RA said that the study was suggestive of "nerve root irritation mainly distribution of L4 on the left [sic]."

In this case, the hearing officer judged the credibility of the witnesses and apparently believed claimant's version of the events. The hearing officer heard evidence suggesting that claimant took money from employer, that he was doing things at work he was not permitted to do, and that he had mentioned hurting his back before at home, along with other evidence. The hearing officer judged the credibility of this evidence and resolved the conflicts in the evidence. We will not substitute our judgment for the hearing officer's because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. It asserts that claimant did not provide proper documentation to show that he had work restrictions and that he had disability. We apply the Cain standard of review to this challenge. The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. A Specific and Subsequent Medical Report (TWCC-64) dated September 3, 1997, stated that the "anticipated length of continued disability" is "min. 8 wks." An eight-week period after September 3, 1997, would end at the end of October, 1997. The hearing officer found disability ended on November 11, 1997. The September 1997 TWCC-64, claimant's testimony and that testimony from Dr. SM support the hearing officer's disability determination. We note that medical evidence of disability was not required. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Christopher L. Rhodes
Appeals Judge