

APPEAL NO. 980215
FILED MARCH 17, 1998

A contested case hearing (CCH) was held on October 30, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____. On appeal, appellant (employer) contends the hearing officer erred in admitting claimants exhibits, in failing to compel claimant to answer a question, and in determining that claimant sustained a compensable injury. Employer contends that claimant was not credible and that the more credible evidence showed that claimant did not sustain a compensable injury. Claimant responds that sufficient evidence supports the hearing officer's determinations.

DECISION

We affirm.

Employer first contends that the hearing officer erred in admitting claimant's exhibits. Employer asserts that claimant did not exchange the exhibits until Monday, July 28, 1997, which was the 17th day after the July 11, 1997, benefit review conference (BRC). The 15th day for exchange of documents under Rule 142.13(c) fell on Saturday, July 26, 1997. Rule 102.3(a)(3) states that, if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. Claimant said he exchanged the exhibits on the next day after Saturday, July 26, 1997, that was not a Saturday, Sunday, or legal holiday (July 28, 1997). Therefore, the hearing officer did not abuse her discretion in admitting the exhibits.

Employer next contends that the hearing officer erred in failing to compel claimant to answer a question at the CCH that concerned his attempt to obtain prescription medication improperly. Claimant refused to answer the question and invoked his Fifth Amendment rights. Employer asserts that the hearing officer was "allowed to draw an adverse inference" from this and that the hearing officer should have done so and determined that claimant was not a credible witness. The hearing officer permitted claimant to exercise his constitutional rights and we perceive no error. The hearing officer judged the credibility of the witnesses and she drew her own inferences in this case and made her determinations based on the record. Given our standard of review, we will not overturn her determinations.

Employer contends the hearing officer erred in determining that claimant sustained a work-related injury on _____. Employer asserts that claimant was not a credible witness and that the great weight and preponderance of the evidence shows there was no compensable injury.

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 the burden to establish an injury through the claimant's 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 he felt a sharp pain and a tightening sensation in his back on _____, while trying to put a jack stand under a trailer. He said he told (Mr. E), employer's owner, that he was hurt and needed to go home. He said Mr. E told him it did not matter and that employer did not have any more work for him. Claimant admitted that he was helping to move some items on July 31, 1995, but said he was taking pain medication at the time and that he could not have done the work without the medication. (Dr. T) testified that he reviewed claimant's MRI report and some photographs of claimant performing "the activities of a heavy laborer" in July 1995, and said that this did not indicate that claimant sustained an injury as he described. Dr. T also said claimant's file indicated some functional overlay.

A July 17, 1995, medical report signed by (Dr. SC), states that claimant has decreased sensation and that his discogram was positive and showed a posterior tear and diffuse bulging. In a February 14, 1996, report, (Dr. GH) stated that claimant had "very significant spasm with range of motion." In a September 13, 1995, letter, Dr. GH stated that he originally had recommended spinal surgery for claimant, that claimant was shown pictures "of him working on a trailer," that claimant told him he was not in the area at the time the pictures were taken and also that the work caused him a lot of pain "afterwards," that claimant was inconsistent, and indicated that, "based on the information that we were provided with . . ., we felt that if he was capable of performing that type of work, that surgery was not necessary." Dr. GH indicated that he sought another opinion regarding the proposed spinal surgery. There was also medical evidence that claimant had degenerative disc disease and prior back injuries and that he underwent discectomy surgery in 1991. The hearing officer determined that claimant experienced back pain while positioning a jack stand under a trailer, that he was diagnosed with a lumbar sprain/strain, and that he sustained a compensable injury.

In this case, the evidence conflicted regarding whether claimant was injured at work on _____. Claimant testified regarding the _____, incident and said he hurt his back. There was evidence that claimant gave differing accounts of his injury and there was

other evidence that was relevant to the issue of claimant's credibility. However, the hearing officer resolved the conflicts in the evidence and determined what facts were established. We will not substitute our judgment for the hearing officer's because her 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:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge