

APPEAL NO. 990138

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 30, 1998, a contested case hearing (CCH) was held. The issue at the CCH was whether the respondent (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that claimant sustained a compensable knee, neck, and back injury and that he had disability from September 1, 1998, to the date of the CCH. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant replied that the hearing officer's determination is supported by the record.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury to his knee, neck, and back is not supported by sufficient evidence. Carrier asserts that carrier's witnesses were more credible and that claimant did not establish that he had an 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 his 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.

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 was doing construction work for (employer) on _____, when his foot slipped as he was moving a large pipe. He said he fell to one knee, striking his knee on a metal rod and injuring his knee, back, and neck. He said he and a coworker went to his foreman, Mr. E, and he told Mr. E about the injury. Claimant said he was told to rest, that after he rested he was told it was too late to see a doctor, and that he was taken to a doctor the next day when he did not feel better. A medical record dated the next day states that claimant had a small swelling to the superior aspect of his patella and that the diagnosis was contusion, low back pain, and lumbar strain. The parties indicated that claimant has not undergone MRI testing. There was evidence that none of claimant's coworkers witnessed claimant's fall.

Claimant's supervisor said that claimant was a good worker but that, when he examined claimant's pant leg, he did not see any dirt on it and he did not find any rod in the dirt where claimant said he fell. Another supervisor said that, when he examined claimant's knee, he did not see evidence of an injury.

In this case, claimant testified that he did sustain an injury. The hearing officer resolved the conflicts in the evidence and found that claimant's version of the events was credible. 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.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. 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. The evidence from claimant regarding his inability to do his job and the off-work slips from Dr. L support the hearing officer's disability determination. 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.

Carrier contends that claimant was not a credible witness because his supervisors did not see a contusion on his knee and because claimant's coworkers were more credible. However, there was medical evidence that claimant did have a swelling on his knee, which the hearing officer could consider in determining whether the injury occurred. Further, the evidence from claimant's coworkers did not establish that no incident occurred. That evidence merely established that the coworkers did not see claimant slip and fall. Carrier complains that claimant did not admit that he had a prior back injury. Claimant testified that he had not had a prior back injury, but then acknowledged he had sustained a very minor back injury "a long time ago" that had resolved quickly. He said he had been able to do heavy labor in the years following that injury. Carrier also complained that claimant said he could not drive, but then acknowledged that he drove to the CCH. However, the record reflects that when claimant was asked whether he is able to drive, he replied that he is "by virtue of necessity." In any case, these matters concerned claimant's credibility and were for the hearing officer to consider in making his determinations. We have reviewed carrier's contentions regarding claimant's credibility and the record on appeal and we perceive no error in the hearing officer's determinations.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge