

APPEAL NO. 990219

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 January 20, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a heat exhaustion injury in the course and scope of employment and that she did not have disability. Claimant appeals, contending that she did sustain a heat exhaustion injury and that her employment exposed her to a greater risk of heat exhaustion. Claimant also asserts that the hearing officer erred in determining that she did not have disability. Respondent (carrier) replies that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable heat exhaustion 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).

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 she was working as a tool press operator at (employer) on _____. She said she was not working near hot metal but that hot air blows up from under the machines she is near. Claimant said that she had a fan and that the building was air conditioned, but that it did not appear to her that the air conditioning was working, so she poured water on herself to stay cool. Claimant said that after lunch on _____, she felt dizzy, nauseated, and like she could not catch her breath, but she did not tell anyone at work. Claimant said that at 3:00 p.m., after her shift ended, she drove to her air conditioned home in her air conditioned car, but that she did not feel better. She testified that she went to the emergency room (ER). Claimant said she was taken off work until July 17, 1998, that she tried to return to work that day, but that she was not permitted to return to work until July 20, 1998, after a drug screen. Employer's environmental health and safety coordinator testified that, to his knowledge, there was no problem with the air conditioning on _____. He said it was warm inside employer's warehouse, that people did "a lot of sweating," and that employer provided a flavored potassium drink as a "safety"

drink. An ER report dated _____, states that claimant complained of chest pain and pressure, that she said she "got overheated at work," and that she had a headache. A July 4, 1998, medical report states that claimant was at home when she began having difficulty breathing, noting that "the humidity was too heavy." Under "plan," it stated that claimant's EKG report showed an "extra" heartbeat and that tests showed her potassium level was "slightly low." An off-work slip states that claimant was hospitalized for heat exhaustion on _____ and (day after injury) and that she should rest at home until July 10, 1998. A July 13, 1998, report stated that a member of claimant's extended family committed suicide and that claimant was given Xanax, but claimant said she did not fill that prescription. An off-work slip states that claimant may return to work on July 17, 1998.

The hearing officer determined that: (1) claimant was not injured at work; (2) claimant sustained heat exhaustion on _____; (3) the heat exhaustion is not causally related to her employment; (4) claimant's employment did not expose her to a greater risk of heat exhaustion than employment generally; and (5) claimant did not have disability.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a heat exhaustion injury on _____, and resolved this issue against claimant. The hearing officer could have considered the evidence that claimant did not have a heavy job, that some air conditioning was provided, and that claimant had the use of a fan in making his determinations that claimant did not sustain heat exhaustion in the course and scope of her employment. He could have also considered the fact that claimant did not go to the ER until approximately eight hours after her shift ended, in making his determinations. We will not substitute our judgment for his in that regard because the hearing officer's determinations are 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. *Id.*

Claimant contends the hearing officer erred in determining that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Because there was no compensable injury, there can be no disability.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge