

APPEAL NO. 990282

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 13, 1999, a contested case hearing (CCH) was held. In response to the issue at the CCH, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from September 14, 1998, through the date of the CCH. Appellant (carrier) appeals, contending that because claimant delayed in seeking medical treatment and because she had preexisting back problems, that her fall at work did not cause an injury. 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 her back is not supported by sufficient evidence. Carrier asserts that claimant had preexisting back problems that are the source of her need for treatment, that claimant continued to work after her fall, and that claimant did not seek immediate medical treatment.

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.

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 on _____, she slipped and fell on her hip while in her supervisor's office. Claimant said that she felt she bruised her hip and that she did not claim an injury when she filled out an accident report. Claimant said she went to her family doctor, Dr. M, on December 9, 1997, and told him that her condition had worsened and bothered her "more and more." She obtained pain medication but was eventually referred to Dr. K, who performed MRI testing and informed claimant that she had a herniated disc. Claimant said she underwent spinal surgery on December 9, 1998. Claimant said she continued to work and that she stopped working in April 1998 because she could not stand the pain anymore. Claimant agreed

that her doctors had been treating her for degenerative disc disease. She said her back had ached due to that condition in the past, but that it was not a big problem.

A September 1998 MRI report states that “annular tears are seen at the L1-2, L3-4, and L5-S1 disc spaces” and that claimant has a “5 mm” disc herniation at L4-5. A December 1998 operative report states that claimant underwent a left-sided L4-5 hemilaminectomy and discectomy.

In this case, the evidence conflicted regarding whether claimant sustained an injury when she fell at work. Claimant testified that she fell on her hip and that her condition deteriorated until she could not work due to the pain. The hearing officer resolved the conflicts in the evidence and determined that claimant did sustain a compensable back injury. 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.

Carrier cites Texas Workers' Compensation Commission Appeal No. 92108, decided May 7, 1992, in support of its assertions. However, that case is distinguishable because that employee said he had few symptoms after his injury and he did not see a doctor for five months. In the case before us, the claimant had immediate symptoms that worsened much more quickly and she saw a doctor within a few weeks. We perceive no error.

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. Claimant's testimony and the medical evidence from Dr. K support the hearing officer's disability determination. The record also contains a work release with restrictions from Dr. P dated in August 1998.¹ We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

¹Claimant did not file a cross-appeal regarding the disability determination.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge