

APPEAL NO. 990470

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 15, 1999. The record closed on January 15, 1999. The issues at the CCH were: (1) did the respondent (claimant) sustain a compensable injury on _____; and (2) did claimant have disability. The hearing officer determined that claimant sustained a compensable injury and that he had disability from September 8, 1998, to the date of the CCH. Appellant (carrier) appeals, contending that the evidence is insufficient to support the hearing officer's determinations regarding injury and disability. Claimant responds that the hearing officer's decision is supported by the evidence and that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier challenges the sufficiency of the evidence to support the hearing officer's determination that claimant sustained a compensable injury on _____. It asserts that claimant's testimony was not credible, that claimant filed a claim because he had been terminated from his employment, that claimant was inconsistent in his testimony regarding when his injury occurred, and that claimant delayed in seeking medical treatment for his 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 or infection 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 working on an oil rig on _____, when he was struck by a machine that knocked him into a "k." Claimant said this happened in the morning, that it was witnessed by Mr. G, and that he went to tell Mr. R around 12:30 p.m. Claimant said he did not think the injury was "major" at the time. Claimant said Mr. R told him he was

fired about 2:00 p.m. but he did not say it was because of unsatisfactory performance. Claimant said he did not ask for medical attention at the time. Claimant said that his shoulder and his low back began to hurt later and he sought medical care on September 8, 1998. Claimant testified that he has not been able to work since his injury and that his doctors took him off work. He said he was told that he has not had an MRI for his shoulder because carrier denied diagnostic testing. In an October 1998 medical record from Dr. G, it states under "assessment" that claimant's medical diagnoses are cervical radiculitis, left shoulder contusion, internal derangement syndrome, and lumbar radiculopathy.

In a transcribed written statement, Mr. G stated that he saw claimant's injury, that claimant told him he would go and report it to Mr. R at noon, and that Mr. R fired claimant. He stated that he did not know what happened to claimant after that time. Mr. R testified that claimant did not report an injury until after he was terminated for unsatisfactory performance. Mr. R said he asked the driller, Mr. C, if he saw claimant's injury and Mr. C said he did not. However, in a transcribed recorded statement taken September 24, 1998, Mr. C said the first knowledge he had of a reported incident involving claimant was when the adjuster taking the statement called on September 24, 1998.

In this case, claimant testified that he sustained an injury at work on _____. The hearing officer resolved the conflicts in the evidence and determined this issue in claimant's favor. 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. Regarding the assertions that claimant's testimony was not credible, that claimant filed a claim because he had been terminated from his employment, that claimant was inconsistent in his testimony regarding when his injury occurred, and that claimant delayed in seeking medical treatment for his injury, these were factors for the hearing officer to consider in making her determinations in this case. The hearing officer was the sole judge of claimant's credibility. We will not substitute our judgment for hers in that regard.

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 supports the hearing officer's disability determination. The record also contains an off-work slip dated September 8, 1998, from the office of Dr. B, signed by Ms. H, that states that claimant was unable to return to work. 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.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge