APPEAL NO. 990471

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 February 2, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury and that he did not have disability. The hearing officer also determined that the claimed injury was caused by claimant's wilful intention and attempt to unlawfully injure another person, thereby relieving the respondent (carrier) of liability for compensation and that the claimed injury arose out of an incident where third persons defended themselves against claimant for personal reasons. Claimant challenges these determinations on sufficiency grounds, contending that the hearing officer ignored certain evidence, believed incredible evidence, did not set forth all the evidence in his decision, and exhibited bias against claimant. Carrier responds that there is no error in the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that he did not sustain a compensable injury. Claimant contends that the hearing officer erred in determining that the claimed injury was caused by claimant's wilful intention and attempt to unlawfully injure another person, thereby relieving the carrier of liability for compensation and that the claimed injury arose out of an incident where third persons defended themselves against claimant for personal reasons. Section 406.032(1)(B) provides that a carrier is not liable for compensation if the injury was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person.

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.

There was conflicting evidence regarding the cause of an altercation in which claimant was involved on (date of injury). The hearing officer summarized much of the evidence in his decision and order. Among the evidence was a transcribed statement from Ms. M stating that she, her son, her son's girlfriend, and her son's baby were in a car on the way to the grocery. She said claimant ran a stop sign in his truck, nearly hit their car, and then tailgated the car after Ms. M's son, Mr. K, made an obscene gesture to claimant. Ms. M said her son then pulled into a restaurant parking lot that claimant could not enter because of truck barriers in the parking lot entrance. She said claimant stopped his truck in the road, exited the truck, and began kissing his hand and putting his hand on his buttocks. She said claimant then began driving around trying to get to where they were parked, and they left to

go home. She said she and two of her sons then went to report claimant's conduct to his supervisors and walked into the office of claimant's employer. Ms. M said claimant opened the door to the office, shoved her in the chest, and began pointing at Mr. K, stating that he was "gonna whip his ass." Ms. M said she told claimant's boss that she was there only to complain about claimant's driving. She stated that claimant "[drew] back a fist to hit [her]" and then her sons intervened and a fight ensued. In a transcribed statement, Mr. V, claimant's coworker, stated that claimant does not get along with a lot of people, that he "has a history of driving real, real reckless," and that claimant has been "shot at." Both Mr. V and claimant's supervisor said they did not see who was the first to start hitting.

Claimant testified and said he did not run a stop sign or tailgate as alleged, that he merely tried to get away from Ms. M's car, and that he did not start the fight at his employer's office. Claimant did say that earlier, after Ms. M's car had entered the restaurant parking lot, he had exited his truck and walked towards them. He denied that he made the motions kissing his hand, but said he made motions to indicate "come and talk with me." Claimant said he had then gone back to work to see if anyone had called to complain. He said that someone then knocked loudly on the door and that when he opened the door, they all began cussing and yelling at each other. Claimant said he did not start the fight and that he did not want a fight. He testified that he was injured in the altercation and that he had disability.

The hearing officer was the judge of the credibility of the witnesses. As the fact finder, he considered the issue of whether carrier was relieved from liability and resolved this issue against claimant. He determined that carrier was relieved of liability and that claimant did not sustain a compensable injury. 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 he 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." Claimant asserts that the hearing officer should have found that he was "disabled" because, he asserts, he proved he was injured in the altercation. However, the hearing officer's conclusion of law was that claimant did not have disability "because [he] did not have a compensable injury." Given the conclusion that there was no compensable injury, this was a correct legal conclusion. Section 401.011(16). The hearing officer did make a finding that claimant's claimed inability to obtain and retain employment "was not due to the claimed injury claimant claimed he suffered while working for employer . . . ." The hearing officer did not find claimant's testimony credible. Although there was some evidence that claimant was unable to do his work for employer, the hearing officer was the sole judge of the credibility of the evidence and decided what weight to give to that evidence. We perceive no reversible error in this regard.

Claimant complains that the hearing officer did not find that he sustained an injury. However, the hearing officer's determinations were that: (1) claimant did not sustain damage or harm to the physical structure of his body, "that arose out of and *while engaged*

in or about the furtherance of the affairs or business of employer . . . ." and (2) "claimant did not sustain a *compensable* injury . . . ." [Emphasis added.] Because the hearing officer found that carrier was relieved of liability, he determined that claimant did not sustain a *compensable* injury. We perceive no error.

Claimant contends the hearing officer was biased and that the decision was "outrageous on its face." We have reviewed the evidence and we perceive no error in this regard. The hearing officer heard conflicting versions of the events and he decided which witnesses were credible. He considered: (1) that Ms. M and Mr. K allegedly refused to testify at the benefit review conference based on Fifth Amendment rights; (2) claimant's testimony that he saw only one person in Ms. M's car; (3) claimant's assertion that Ms. M and Mr. K lied about having had a baby in the car; and (4) whether the evidence from Ms. M and Mr. K was corroborated. He made his determinations based on the evidence before him. The hearing officer decided whether claimant knew that other people were in the car and decided other credibility issues before him. We conclude that his determinations are supported by sufficient evidence.

Claimant complains that the hearing officer erred in stating that claimant "testified he stopped his truck on loop 340" after Ms. M's car went into the restaurant parking lot. Claimant asserts that the hearing officer misstated the facts. However, claimant said he was driving on Loop 340, that he did not pull into a parking lot, that he did not pull into a driveway, and that he stopped and exited the truck. From this evidence, the hearing officer could infer that claimant stopped on Loop 340 and claimant did admit that he stopped, exited the truck, and walked toward Mr. K. We perceive no error.

Claimant complains that the hearing officer did not detail all of the evidence in the decision and order and that he did not properly consider the live testimony at the CCH. However, the hearing officer was not required to detail all of the evidence in the decision and order. He made findings of fact and conclusions of law in his decision, as is required, and we perceive no error in the failure to detail all of the evidence. Further, there is nothing to indicate that the hearing officer did not consider all the evidence in this case.

We affirm the hearing officer's decision and order.

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Judy Stephens
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Gary L. Kilgore
Appeals Judge