

APPEAL NO. 990565

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 21, 1999. She determined that the appellant (claimant) did not sustain a compensable injury; that she did not have disability; that the date of any alleged injury was _____; and that claimant did not timely report her alleged injury to her employer. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable 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 she injured her back and neck in June or July 1998 while lifting a heavy box of bread. Claimant said it was the 13th of June or July and that she did not know the exact date. She said she went to the doctor a few days later, that she was taken off work, and that she took the off-work slips to her employer. She said that when she tried to return to light-duty work two or three weeks later, her employer refused to allow her to return until she could work full duty. Claimant said she has continuing problems with pain in her leg, neck, and head and that she had never had these problems before she lifted the box. There is medical evidence in the record dated in August 1998 stating that claimant was diagnosed with cervical disc syndrome, headaches, and a "gluteal tendinitis," and that claimant's date of injury is _____. On a contract with her attorney and on her Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41), claimant listed _____, as the date of injury.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained a compensable injury on (alleged date of injury), or on _____, and resolved this issue against claimant. The hearing officer indicated that she did not find claimant's testimony credible and noted that claimant had not met her burden of proof. We will not substitute our judgment for hers in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Given our standard of review we will not overturn the hearing officer's decision. *Id.*

To the extent that claimant contends the hearing officer erred in determining that she did not have disability, we note that 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 in this case, there can be no disability.

Claimant contends the hearing officer erred in determining that she did not timely report her alleged injury to her employer. The applicable law and our standard of review are stated in Section 409.001; Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992; Section 410.165(a); and Cain, supra.

Claimant said she told her coworker, MC, about the injury on July 18, 1998, a few days after it happened. Claimant testified that MC sometimes acts as a supervisor. Claimant said she went to a doctor about two days after her injury, that the doctor gave her an off-work slip, and that she took the off-work slip and gave it to her employer. In a transcribed, recorded statement, MC stated that between _____ and the present, claimant never told her that she injured herself at work lifting boxes. In a transcribed recorded statement, (Ms. M), a supervisor, stated that, between _____ and July 1998, claimant never reported an injury. MC stated that claimant told her she was off work because of headaches. An Accident and Sickness Benefit claim form signed by claimant on July 30, 1998, states that her illness or injury is due to her occupation.

Regarding the date of injury, the hearing officer determined that claimant's alleged lifting injury took place on _____. Claimant said she was unsure of the date of her injury, but contended that it happened in either June or July 1998. There were medical documents and other documents in the record listing a date of injury of _____. We have reviewed the hearing officer's determination regarding claimant's date of injury and we conclude that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

Regarding whether claimant timely reported her injury, there was conflicting evidence regarding whether claimant told MC about her injury a few days after it happened and also whether she told other supervisors a few days after the injury and gave employer an off-work slip. MC and Ms. M both denied that claimant reported her alleged injury to them between _____ and July 1998. The hearing officer determined that claimant did not notify her employer of the alleged injury until July 30, 1998, which was more than 30 days after _____, the date of the alleged injury. In light of our standard of review, we will not disturb the hearing

officer's determinations in this regard because they are not against the great weight and preponderance of the evidence. Cain.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge