

APPEAL NO. 990641

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 20, 1999, and on March 5, 1999. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that he did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent city (referred to as either "self-insured" or "city," where appropriate) 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 he did not sustain a compensable injury. He asserts that his motor vehicle accident (MVA) caused a compensable injury, that he was in the course and scope of employment at the time of the MVA, that he was not merely en route to work at that time, that he had already started working at the time the MVA occurred, and that he was already under the control of his employer at that time. 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 a disease or infection naturally resulting from the damage or harm." Section 401.011(26). A claimant generally 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.

There were many witnesses that testified regarding the issues. Briefly, claimant testified that he worked as a code compliance officer for city and that he drove the city vehicle to and from work each day. He testified that on his way from work to his home on (a day before the date of injury), a citizen asked him about what the citizen thought might be a city code violation on a nearby property. Claimant said he told the citizen that he would "take a look" at the problem. Claimant testified that, on the way to work the next day, he drove by the property to obtain an address so that any investigation could begin. Claimant indicated that this property was not very much out of his way. Claimant said he merely slowed the city vehicle he was driving to take a look at the property. Claimant testified that he then proceeded and that, after looking at the property, he was later involved in an MVA, and injured his head, neck, and back.

Claimant said that he obtained therapy for his back and that he now has migraine headaches that require medical treatment. Other witnesses testified, for the most part regarding facts that concerned whether claimant was in the course and scope of his employment at the time of the MVA.

The hearing officer determined that: (1) on _____, claimant was involved in an MVA; (2) claimant was not performing his job duties for employer at the time of his MVA; (3) claimant was following one of his usual routes from his home to work; (4) claimant "did not engage in an inspection of the [property] on his way to work on _____"; (5) claimant did not sustain a compensable injury; and (6) claimant did not have disability.

The hearing officer was the judge of the credibility of the witnesses. As the fact finder, he considered the issue of whether claimant sustained a compensable injury in the course and scope of his employment on _____, and resolved this issue against claimant. The hearing officer determined that claimant did not make an inspection of certain property on the way to work on _____, and apparently did not find claimant's testimony in this regard to be credible. The hearing officer was the sole judge of the credibility of claimant's testimony. We will not substitute our judgment for his regarding credibility 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, supra*. Given our standard of review we will not overturn the hearing officer's decision. *Id.* Claimant complains about the hearing officer's factual recitations and determinations, and asserts that his testimony established contrary facts. Again, however, the hearing officer was the sole judge of the credibility of the evidence and he determined what facts the evidence established. After reviewing claimant's brief and assertions on appeal, we conclude that the hearing officer's determinations are supported by the evidence. We perceive no reversible error.

Claimant contends the hearing officer erred in determining that he did not have disability. Claimant contends there was evidence of disability in the form of off-work slips from his doctors. However, 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:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge