APPEAL NO. 990653

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 16, 1999. The issues at the CCH were whether appellant (claimant): (1) sustained a compensable injury on _____; (2) had disability; and (3) timely reported her injury to her employer. In the decision and order, the hearing officer stated that the fourth issue regarding election of remedies was withdrawn by agreement. The hearing officer determined that claimant did not sustain a compensable injury, that she timely reported her alleged injury, and that she did not have disability. The hearing officer also made a determination that there was no election of remedies. Claimant appeals, contending that she did sustain a compensable injury and that she had disability. Claimant complains that she was unable to prove her case because she was unable to obtain records from employer that were subpoenaed. Respondent (carrier) responds that sufficient evidence supports the challenged determinations.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable injury. Claimant contends that she fell while entering the door at work on _____, injuring her right ankle, right shoulder, left knee, and low back. 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.

The testimony at the CCH was lengthy. At the CCH, claimant testified regarding three different work-related injuries that she alleged took place in 1997. Two of the injuries were falls at work where claimant had been a hairdresser and manager. Regarding this injury, it was apparent that claimant was unsure of the exact date of the two alleged falls in question. Claimant testified that on _____, she was entering the shop to "open" it, that

she caught her heel and fell, and that she injured her right ankle, left knee, back, and right shoulder. Claimant said she told Mr. J about the injury that morning and that she told him she fell. Mr. J denied that claimant reported an injury to him. He said he did not hear that claimant was claiming any workers' compensation injury until June 1998. Claimant testified that her employment was terminated in January 1998.

The hearing officer determined that claimant did not sustain a compensable injury on _____; that she may have fallen, but she did not injure any part of her body; and that she did not have disability.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable injury on _____, and resolved this issue against claimant. We will not substitute our judgment for his 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, *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 she 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." Section 401.011(16). Because there was no compensable injury, there can be no disability.

On appeal, claimant complains that she was unable to prove her case because certain records were not provided to her by employer. She states that employer's records would have provided a witness for her. She asserts that a customer had been waiting for her the day that she fell opening the shop. The record does not contain the request for subpoena or an order granting such request; they were not admitted as exhibits. At the CCH, the hearing officer indicated that claimant was late in filing a request for subpoena. Claimant does not contend that the hearing officer erred in failing to grant her request for subpoena. We note that, at the CCH, claimant did not mention that a customer had witnessed this fall as she was opening the store. There was no request for continuance filed by claimant in this case. *See* Texas Workers' Compensation Commission Appeal No. 94143, decided March 21, 1994. We perceive no reversible error.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge