APPEAL NO. 990661

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 16, 1999, a contested case hearing was held. With respect to the issues before him, the hearing officer determined that respondent (claimant) sustained a compensable injury after a fall at work on _____; that she timely reported her injury to her employer; and that she did not have disability. Appellant (carrier) appeals the determinations that claimant sustained a compensable injury and that she timely reported her injury. Claimant did not file a cross-appeal. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order. There was no appeal regarding an election of remedies issue that was withdrawn by agreement.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury on _____, is not supported by sufficient evidence. Carrier asserts that Ms. L, who said she did not see claimant fall, was a more credible witness than Ms. F, who testified that the fall occurred. Carrier points to evidence that claimant delayed in seeking medical treatment for her alleged right knee injury. Carrier asserts that claimant's daughter was not a credible witness and that she should have been in school and could not have witnessed the fall. Carrier contends that Ms. F was not a credible witness because she was claimant's friend. Carrier also asserts that a knee sprain should have resolved and would not appear on claimant's MRI scan, which was taken about eight months after the incident.

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.

Claimant testified that she was working as a hair stylist on _____, when she slipped and fell, landing on her right knee. She said another hair stylist had left water on the floor by the shampoo bowls and that she slipped on the wet floor. Ms. F said she saw claimant slip and land as though in a "praying" position. Claimant's daughter testified that she saw claimant slip and that she helped her mother get up.

In this case, the evidence conflicted regarding whether claimant slipped and fell on her knee at work on _____. Ms. F and claimant's daughter said they witnessed the fall, while Ms. L denied that she saw it occur. The hearing officer resolved the conflicts in the evidence, decided which witnesses were credible, and determined what facts were established. The hearing officer noted that he found Ms. F "more believable" than Ms. L. He also noted that a May 22, 1998, MRI report stated that claimant had an anterior cruciate sprain of her knee. Although carrier asserts that this sprain injury should have resolved, the hearing officer was the sole judge of the credibility of the medical and other evidence. We will not substitute our judgment for the hearing officer's because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier next contends that the hearing officer erred in determining that claimant timely reported her injury to employer within 30 days of the date it occurred. Carrier asserts that the hearing officer's determination is against the great weight and preponderance of the evidence. Carrier asserts that the "incident report" filled out by claimant was "manufactured" by claimant for the CCH and that claimant was inconsistent regarding the date of the injury. Carrier also notes that claimant's supervisors denied that she reported any injury to them.

Claimant testified that after she fell at work on _____, she told her supervisor, Ms. J, about it either that day or the next day. She said she told the operations manager, Mr. J, about the fall the next morning and that both Mr. J and Ms. J asked if she was okay. Claimant said Ms. J "wrote it down" in case claimant needed to see a doctor later. Claimant said she made an injury report on an incident report form and sent it to the employer's main office. Both Mr. J and Ms. J denied that they knew or heard anything about claimant's _____, fall until June 1998.

Generally, a claimant must report an injury to the employer within the requisite 30-day period, Section 409.001, unless there is good cause for the failure to timely report the injury. Section 409.002(2). Where the claimant offers evidence that the supervisor was notified of the injury, but the supervisor testifies he or she was not notified, a question of fact exists for determination by the trier of fact. St. Paul Fire & Marine Insurance Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991.

The hearing officer was the sole judge of the witnesses' credibility and obviously decided that claimant was credible in her testimony. The hearing officer resolved the conflicts in the evidence and determined which testimony and documentary evidence he found credible. We will not substitute our judgment for that of the hearing officer because

his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Carrier complained that the dates by the signatures on one incident report form were written in what appeared to be the same handwriting. Claimant's daughter testified and indicated that she thought that she had signed and dated the form. Whether claimant "manufactured" the report form was a question for the hearing officer to decide. He was the sole judge of the credibility of the evidence and he determined the injury and timely reporting issues in claimant's favor in this case. We perceive no 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