

APPEAL NO. 990711

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 December 14, 1998. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury and that she did not have disability. Claimant appeals these determinations on sufficiency grounds. Respondent (carrier) responds that claimant's appeal is untimely and also that there is no error in the hearing officer's decision and order.

DECISION

We grant the motion for reconsideration filed in this case and affirm the hearing officer's decision and order.

The Appeals Panel originally determined that claimant's appeal was not timely filed and that the hearing officer's decision and order became final pursuant to Section 410.169. Texas Workers' Compensation Commission Appeal No. 990082, decided February 26, 1999. Claimant filed a motion for reconsideration, which is granted. We will now address claimant's appeal on the merits.

In her appeal, claimant challenges the hearing officer's determination that claimant did not sustain a compensable injury. Claimant asserts that the evidence shows that claimant sustained 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 naturally resulting from the damage or harm. Section 401.011(26). A claimant may meet his burden to establish an injury through the claimant's 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 on an assembly line on _____, when she felt a shock in her neck. She said she went to Mr. M and told him that she hurt herself and that she wanted to go home. She testified that she went to the emergency room on January 23, 1998, and that she was told she had a muscle spasm. Mr. M denied that claimant reported an injury that day. On an "Employee's Report of Industrial Injury" form, it states that claimant did not

report the alleged injury on the day it occurred and that she did not do so because “[she] got mad because [she] hurt [herself].” When asked why she wrote this, claimant said she “misunderstood.”

A March 11, 1998, radiographic report states that claimant has an abnormal straightening of the cervical lordosis and that a lateral list of the cervical spine is suggestive of spasm. On an Initial Medical Report (TWCC-61) from Dr. L, the diagnoses stated were cervical IV disc syndrome, cervical radiculitis, and shoulder sprain/strain.

In this case, the hearing officer considered the evidence regarding whether claimant sustained a compensable injury on _____. The hearing officer did not find claimant’s testimony to be credible regarding whether she sustained an injury. The hearing officer was the sole judge of the credibility of the evidence, including the medical evidence, and he resolved any conflicts in the 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*.

Claimant next challenges the sufficiency of the evidence to support the hearing officer’s disability determination. Because there was no compensable injury, there can be no disability in this case. Section 401.011(16).

We affirm the hearing officer’s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O’Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge