

APPEAL NO. 990870

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 4, 1999, and March 23, 1999. She determined that the appellant (claimant) did not sustain a compensable injury, that she did not have disability, and that the alleged date of injury. 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 back injury. Claimant contends that carrier did not introduce any evidence to controvert claimant's testimony that she sustained a work-related 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 a disease or infection naturally resulting from the damage or harm." Section 401.011(26). A claimant may meet the burden to establish an injury through his or her 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.

It was not clear whether claimant was alleging a repetitive trauma injury or a specific injury, although during argument her attorney stated that it was a specific injury. Claimant testified that she worked for (employer) on an assembly line. She said that on October 21, 1997, she was put on a different line that involved heavier repetitive lifting. Claimant said that that day she began to feel pain in her back that she attributed to menstrual-related pain. She said she also worked for another employer at a festival for 10 days in early November and that on November 6, 1997, she experienced pain while walking during her employment at the festival. Claimant said her work at the festival did not involve any heavy lifting.

On a November 10, 1997, doctor's office form, claimant indicated that her injury occurred _____, and said, "injury progressed slowly due to lifting and turning with weight in arms. Injury occurred while walking because of swelling to the back." In a transcribed oral statement taken November 18, 1997, claimant was asked what time of day her work injury happened and she said, "well, I couldn't pinpoint what time because I mean it didn't hit me there, it was . . . after, I mean I wasn't even working when it hit me so but [my back] was so swollen that they, the doctor . . . said it had been something that I had been doing you know that's kind of like irritated or something like that." In that statement, claimant also indicated that she had been having problems since October 21, 1997, but that she thought it was because she was starting to menstruate. Claimant indicated that the cause of her injury was lifting while working for employer.

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 back injury, and resolved this issue against claimant. The hearing officer stated that claimant did not injure her back as a result of lifting and carrying items at work. We will not substitute our judgment for the hearing officer's 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*. We note that carrier did not have the burden to introduce any evidence at the CCH. The hearing officer could determine that claimant did not sustain an injury by determining that claimant did not meet her burden of proof. We further note that claimant's other complaints regarding the hearing officer's determinations concern fact issues for the hearing officer to consider in making her determinations. 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. 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.

Claimant contends the hearing officer erred in determining that the alleged date of injury. Claimant contends the injury occurred on _____. The hearing officer could determine from the evidence that claimant did not sustain an injury as she alleged. We perceive no error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge