

APPEAL NO. 991313

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 May 17, 1999. The issue at the CCH was whether the respondent (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined these issues in claimant's favor, from which determinations appellant (carrier) appeals on sufficiency grounds. The file contains no response from the claimant.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury is not supported by sufficient evidence. Carrier asserts that the hearing officer failed to consider the evidence. Carrier also contends that the fact that claimant had been reprimanded for not coming to work and because he delayed in reporting his injury, this shows he did not really sustain an injury at work.

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 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 on _____, he lifted a heavy box and injured his upper middle back on the left side. He said he thought he just pulled a muscle and said he did not report an injury until around October 19, 1998, when his symptoms had worsened. Claimant said that on October 19, 1998, he saw the company doctor, Dr. G, who returned him to limited work. Claimant said he went to work the next day, that he worked two hours, and that he went to his supervisor, who sent him home. Claimant said he returned to Dr. G who limited his lifting to five pounds, but that when he told his supervisors about these limitations, he was told no such light work was available. Claimant said he was treated with muscle relaxers, pain killers, and physical therapy, and that he is no longer receiving any

treatment. Claimant testified that he was released to full duty and that he went back to work in late November 1998.

An October 19, 1998, medical report from Dr. G states that claimant complained of a lifting injury, that the diagnosis is "back strain," and that claimant was given medications, including Naprosyn and Soma. The report states, "back: tender/spasm L upper lumbar parasp." A "return to work form" signed by Dr. G states that claimant may resume modified duties on October 19, 1998, with no lifting over 25 pounds. Another "return to work form" dated November 19, 1998, states that claimant may return to his regular duties with no further treatment. A February 1999 MRI report states that claimant has a minimal disc protrusion at L4-5.

In this case, the evidence conflicted regarding whether claimant sustained a compensable injury. Claimant testified that he was injured while lifting a box. The hearing officer resolved the conflicts in the evidence and stated that claimant appeared credible. In resolving the issue in this case, she considered the evidence regarding claimant's delay in reporting his injury and his history regarding tardiness and absences from work. We will not substitute our judgment for the hearing officer's because her injury 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 challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier contends that claimant did not have disability because he did not sustain a compensable injury. Carrier also asserts that the medical evidence does not support the hearing officer's disability determination. Carrier contends that claimant was given a light-duty release on October 19, 1998, and that claimant was able to earn his preinjury wage.

We apply the Cain standard of review to this challenge. The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. The evidence from Dr. G shows that claimant was on restricted duty from October 19, 1998, to November 19, 1998. Claimant testified that he worked for two hours on October 20, 1998, but that he was then sent home and, after that, he was told work was not available within his restrictions. There was evidence that claimant was offered work within his restrictions and that he said he could not do the work.¹ Claimant's testimony and Dr. G's "return to work" forms support the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

¹There was no issue regarding bona fide offer.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge