

APPEAL NO. 991321

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 26, 1999. She (hearing officer) determined that: (1) appellant (claimant) did not sustain a compensable occupational disease injury "on _____"; and (2) claimant did not sustain a compensable injury on _____. Claimant appeals the determination that she did not sustain a compensable injury. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable occupational disease cervical injury. Claimant contends that she injured her neck moving her neck back and forth while looking at a computer screen. She asserts that 1993 MRI evidence shows that she had a herniation only at C5-6 and that her C6-7 herniation was caused by a _____ 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 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 sustained a prior neck injury in 1993 and that she underwent fusion surgery at the C5-6 level. She said she has had some "stressful feelings" in her neck since 1995, but that she has had no reason to see a doctor. She said she has occasionally taken pain medications and anti-inflammatories since 1995.

Claimant testified that in _____ she was working at a computer, jerking her neck back and forth, when she experienced a sudden shocking pain in her neck on _____. She said she went home, took medications for her pain, and that she later saw Dr. M for her injury.

August 1998 physical therapy notes state that “no injury or trauma” was reported. A February 5, 1999, note from Dr. M states that claimant first noticed pain, numbness, and a stiff neck on June 16, 1998. Dr. M did not mention claimant’s work at the computer with regard to causation. He stated that an MRI documented a “new disc herniation at C6-7.”

A 1993 MRI report states that claimant had a disc herniation on the right side at C5-6. A 1995 MRI report also mentioned the C5-6 level, noting a fusion, but does not mention problems at the C6-7 level.

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 specific injury or an occupational disease injury, and resolved these issues against claimant. The hearing officer was the sole judge of the credibility of the evidence and she determined what facts were established. We will not substitute our judgment for hers 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.*

We affirm the hearing officer’s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge