

APPEAL NO. 991370

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 June 4, 1999. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury and that he did not have disability. 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 contends the hearing officer erred in determining that he did not sustain a cervical, thoracic, and lumbar injury in the course and scope of employment. 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 was working lifting a door and trying to pry a box loose from the door. Claimant also said he slipped on some spools and almost fell several times while working that day. Claimant said he strained his back lifting the door and he began to experience back pain that worsened over time.

In an undated letter, Dr. B stated that claimant had a prior back injury in 1995; that a 1995 MRI showed disc disease at two lumbar spinal levels and a slight herniation at L4-5; that claimant's 1998 compensable injury includes his low back; that it is likely that claimant sustained injuries to his cervical, thoracic, and lumbar spine; and that a 1998 MRI report shows a "5mm disc herniation" at L2-3, and a "4mm disc herniation" at L4-5. Dr. B indicated that a comparison of the MRI reports showed a significant change. In a January 1999 report, Dr. M stated under "impression," "myofascial pain syndrome," "thoracolumbar sprain," "cervical sprain," and "lumbar radiculopathy."

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 injury on _____, and resolved this issue against claimant. The hearing officer stated that she found that claimant was not credible in his testimony. The hearing officer considered whether claimant was consistent in his testimony and reports to his doctor regarding when he began to experience pain. The hearing officer considered this and the medical evidence, including the MRI evidence, and determined whether the evidence was credible. The hearing officer decided what weight to give this evidence. 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.*

Claimant contends the hearing officer erred in determining that he did not have disability. 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.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge