

APPEAL NO. 991386

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 3, 1999, a contested case hearing (CCH) was held. In response to the issues at the CCH, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from December 14, 1998, to the date of the CCH. Appellant (carrier) challenges these determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury to his back is not supported by credible evidence. Carrier asserts that claimant's testimony was not "corroborated" and complains that claimant attempted to conceal the fact that he sustained a prior back injury in 1995.

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 injured his back while lifting at work. Claimant said he tried to keep working, but then told his supervisor about his injury and went home because he was in pain. He said he saw a doctor a week later. Claimant testified that he had been working for (employer) off and on for about one and one-half years when he was injured. Claimant said he sustained a prior back injury in 1995 and that he was off work for less than two weeks at that time. Claimant said he had also sustained a shoulder injury in a January 1998 motor vehicle accident.

In a December 14, 1998, medical record, (Dr. I) diagnosed a probable back strain. A March 1999 MRI report states that a “posterior disc herniation impinges the left S1 nerve root and contacts the right S1 nerve root within the subarticular recesses bilaterally.” A March 1999 functional capacity evaluation report states that claimant demonstrates a severe functional strength deficit and that his injury is having a significant impact on his ability to fulfill his current job duties.

In this case, claimant testified that he sustained a compensable back injury on _____. The hearing officer reviewed the evidence in the file, decided which witnesses were credible, and resolved any conflicts in the evidence. She considered carrier’s contentions that claimant was attempting to hide the fact that he had a compensable back injury in 1995 and decided what weight to give to this evidence. The hearing officer also considered whether claimant’s testimony was “corroborated,” but could find that claimant sustained an injury based on his testimony alone. We will not substitute our judgment for the hearing officer’s because her 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’s entire case was “lacking in credibility.” 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. Claimant testified that he was taken off work on December 14, 1998, and that he has not been able to return to work since that date. The medical evidence as well as the testimony from claimant supports 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, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge