

APPEAL NO. 991400

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 May 28, 1999. He (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 first contends the hearing officer erred in determining that he did not sustain a compensable back injury at work on _____. Claimant asserts that there is no evidence that claimant had any prior back problems and that all the evidence shows that claimant suffered an injury to his back when he slipped from a pipe and fell, jerking his back. 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 _____, while working as a painter, he fell off of some pipes, the safety rope jerked him, and he hit his back on a cable. Claimant said he came down and told his coworker, HM, and his supervisor, Mr. P, about his fall. Claimant said he worked for a few days after the fall, that he went to (Country) to visit his family, and that when he returned to work on September 30, 1998, he could not walk. Claimant said he was taken home and that he saw Dr. S the next day. Interview notes from carrier's investigator state that HM told the investigator that he did not recall that claimant told him about a fall or that his back was hurting. HM testified at the CCH that claimant did tell him about the fall and that something was wrong with his leg.

A medical record from Dr. S states that the "date of onset" was "October 97" and that claimant was experiencing numbness and pain in his legs. Under "history of complaint" it states

“no known injury - Pt. rides horses this might have aggravated LB, 9-30-98 he had to be brought home from work.” There is nothing listed under “diagnosis” on the medical record.

The hearing officer determined that: (1) claimant did not report an injury on _____, but continued to work his usual duties for two days before going to (country); (2) claimant told his treating doctor that “he had not suffered an incident” but that “riding horses might have aggravated back pain which started in October 1997; (3) claimant did not report an injury until he returned from country on September 30, 1998; (4) claimant did not meet his burden to prove he sustained an injury at work; and (4) claimant did not have disability. The hearing officer stated in the decision and order that he did not believe claimant’s testimony that he had injured himself in a fall at work.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable back injury on _____, and resolved this issue against claimant. We will not substitute our judgment for his 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:

Philip F. O’Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge