APPEAL NO. 991520

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 15, 1999. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable occupational disease low back injury with a date of injury of _____, and that she did not have disability. Claimant appeals, contending that the evidence shows she did sustain an occupational disease injury. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends that the hearing officer erred in determining that she did not sustain a compensable occupational disease low back injury. She contends that: (1) she was required to twist frequently at work; (2) she sustained a repetitive-type injury and the doctor eventually diagnosed her back pain; (3) she has pain at work only; (4) the knee pain did not cause the back pain, but the back condition caused the knee pain; and (5) she had disability due to her claimed injury.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he 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 naturally resulting from the damage or harm." Section 401.011(26). The definition of "injury" includes occupational diseases. An "occupational disease" is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 works sewing labels on garments and that she is required to sit continuously and twist right and left frequently during the day. She said she first started having pain below her knee in May 1998 and that she thought she was having problems with her circulation. She went to the doctor and on September 18, 1998, he told her for the first time that her problems were work related. She said the doctors began treating her back and that she still has pain walking and sitting, although she has not worked since September 28, 1998.

In a November 3, 1998, letter, Dr. K stated that claimant first presented with knee pain, that it became apparent that she was developing sacroiliitis with resultant sciatica, and that it is a direct consequence of her job. In a December 22, 1998, report, Dr. N stated that he disagrees that claimant has sacroiliitis and stated that she has nonwork-related degenerative disc disease.

The hearing officer stated that claimant first noticed a knee injury and that it was difficult to comprehend how the claimed low back injury was connected. The hearing officer determined that: (1) claimant was required to sit constantly while sewing and that sitting is not a repetitively traumatic activity; (2) claimant was not required to twist several hundred times per day; (3) claimant did not sustain an occupational disease low back injury in the course and scope of employment; and (4) she did not have disability.

The hearing officer assigned whatever weight she deemed appropriate to the evidence before her, including the medical evidence. She could have chosen to believe or disbelieve any part of the evidence before her. The hearing officer stated in the decision and order that she did not find claimant's medical evidence to be persuasive. Having reviewed the record in this case, we do not find the hearing officer's decision to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. For this reason, we will not substitute our judgment for that of the hearing officer. Cain, supra. Because no compensable injury was found, we also affirm the disability determination.

We affirm the hearing officer's decision and order.

_____
Judy Stephens
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge