

APPEAL NO. 991696

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 July 16, 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 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.

It was not disputed that claimant was diagnosed with a herniated disc. Claimant testified that he injured his back on _____, when he was pulling sheets of sheet rock off a co-employee. He said the sheet rock had fallen as a dolly flipped over, and that he heard his back pop as he was lifting the sheet rock. Claimant said that the pain he felt was in his leg, that he went home limping, and that he continued to work for two days. Claimant said his condition worsened over the weekend and that he went to the emergency room on January 4, 1999. Claimant said he told his supervisor, Mr. G, that he had been hurt at work. Claimant said that after he found out that he had a herniated disc, he went to Ms. M in the human resources department and told her he had injured his back on the job. He said he did not connect his leg pain to the incident where his back popped at work until he talked to the doctors after his MRI. Claimant said it is not true that he told people at work that his injury is not work related. In a handwritten statement, Mr. G said claimant denied that he had a work-related injury when asked and that claimant never reported an injury to him. There was other evidence that claimant's injury may not have occurred at work as he testified.

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. Claimant's complaints on appeal concern whether the hearing officer should have found claimant's evidence to be credible. The hearing officer specifically stated that he did not find claimant's testimony regarding how he sustained his injury to be credible. 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. 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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge