

APPEAL NO. 991751

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 6, 1999, a contested case hearing (CCH) was held. In response to the issues at the CCH, the hearing officer determined that: (1) respondent (claimant) sustained a compensable back injury on _____; (2) claimant did not sustain a compensable neck injury on that date; and (3) claimant had disability from November 2, 1998, to April 23, 1999. Appellant (carrier) appeals 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 low back is not supported by sufficient evidence. Carrier asserts that claimant was not credible as is shown by the evidence that claimant had back pain before _____, that she has a congenital thoracic spine condition, that she did not immediately report an injury, and that she delayed in seeking medical treatment. Carrier asserts that claimant sustained her injury while moving "residences."

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 the burden to establish an injury through the claimant's 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 _____, she felt a pulling sensation in her back after unloading food from a truck at work. Claimant said she felt pain that day but that she continued to work with intermittent pain until she saw a doctor on October 28, 1998. She said she did not do any lifting at work during that period of time. Claimant said she was taken off work and that she returned to limited-duty work on June 8, 1999. Claimant testified that she was not able to go back to work before June 8, 1999. Claimant denied

that she packed boxes or moved her residence before November 1998. Claimant said she had prior back problems in 1997 and that she saw a chiropractor at that time. Mr. C, another employee, said claimant sometimes did unloading of trucks. He and Ms. C, a supervisor, said claimant had complained of back pain before _____. Ms. C said claimant called her on _____, and said her back was hurt but that she was not sure whether she had hurt it at work. Claimant denied that she told Ms. C that, before she turned 30, she would have to have surgery for a congenital spinal defect.

A November 27, 1998, MRI report states that claimant has a broad-based posterior disc herniation at L4-5 that effaces the thecal sac and contacts the proximal L5 nerve roots. In an April 23, 1999, letter, Dr. K stated that claimant had scoliosis and congenital fusing in her thoracic spine, but that this was not causing her pain. Dr. K said that claimant has a herniated disc and that he believes this is causing her pain. Several off-work slips from Dr. K state that claimant was unable to work between November 2, 1998, and April 23, 1999.

In this case, the evidence conflicted regarding whether claimant sustained a compensable low back injury at work. Claimant testified that she injured her back at work on _____. The evidence emphasized by carrier was considered by the hearing officer and concerned claimant's credibility. The hearing officer was the sole judge of claimant's credibility. We will not substitute our judgment for the hearing officer's because his determinations are 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. 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. The evidence from claimant and from Dr. K supports the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge