

APPEAL NO. 991761

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 14, 1999, a hearing was held. He (hearing officer) determined that appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that he did not have disability. Claimant appeals, asserting that he did sustain physical damage to his neck, shoulder, and back. Respondent (self-insured) replied that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable injury on \_\_\_\_\_. 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 he drove a bus for the self-insured. He testified that on \_\_\_\_\_, he was in the parked bus when another bus passed him to his left and attempted to park directly in front of claimant's bus. Claimant said that bus struck the left front side of claimant's bus with its right rear portion. Claimant testified that he was "knocked . . . against the fare box, and then I went back into my seat. And then I went forward and hit the steering wheel." He said that at the time he had no pain, but he began to feel stiff later and woke up the next morning in pain.

Two days later claimant saw Dr. B, who recorded that claimant was sitting in the driver's seat with his neck turned at the time of the collision and that he "twisted his neck, shoulders, and low back." Dr. B diagnosed an acute cervical and lumbar sprain. Claimant then saw Dr. H, D.C. on March 12, 1999; Dr. H recorded that when claimant's bus was "clipped" by another bus, claimant was turned toward passengers. Dr. H said, "patient reports that the impact knocked him back and forth." Dr. H diagnosed cervicobrachial

syndrome, lumbar syndrome, shoulder pain, and muscle spasm. Claimant then saw Dr. L on April 22, 1999. Dr. L recorded that claimant's bus was stationary "when broad-sided on the driver's side by another Metro bus." Dr. L diagnosed an acute cervical and lumbar strain.

Mr. B, self-insured's service supervisor, testified that he investigated the bus collision for the self-insured. He said he filled out an accident report that showed no injuries. He said there was no "noticeable damage" to the buses, adding that there was a "scuff mark." He said that claimant's bus was parked and the other bus was estimated to have been traveling about five miles per hour. He said that he asked if claimant was hurt and claimant said he was not. He added that claimant did not appear to be in distress and that claimant drove the bus back to the lot. Claimant then provided a report in which he said that a "bus tapped my bus it came too close to the bus and tapped it and my bus was not moving." A space provided for "persons involved or injured" was marked "N/A."

There was also evidence that on the way back to the lot in the bus, claimant's bus knocked over some barrels supporting a guardrail nearby. There was also evidence that claimant was suspended for a day for not reporting this event. Mr. G testified that he was an assistant superintendent on \_\_\_\_\_. He said he had a meeting with claimant the day after the accident to discuss claimant's one-day suspension for failure to report the second accident. Mr. G said claimant was in no distress and said nothing of having been thrown around in the bus during the first accident. He said that the day after that, after he took claimant in for retraining, claimant then told him he was injured in the first accident. Mr. G said that he later spoke to claimant after the claim was denied by the self-insured and told him to provide documentation that he was under a doctor's care. He said this was not done and claimant was terminated on February 24, 1999. Mr. G added that claimant provided a doctor's statement in June 1999.

Again, the hearing officer is the sole judge of the weight and credibility of the evidence. There was medical evidence and testimony from claimant that supported his claim. However, the hearing officer decided whether this evidence was credible and determined what weight to give to the evidence. We have reviewed the record and the hearing officer's determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. With an affirmed determination that no compensable injury occurred, there can be no disability. See Section 401.011(16).

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge