APPEAL NO. 991829

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 13, 1999. The issues at the CCH were: (1) did the respondent (claimant) sustain an injury in the course and scope of employment; (2) did claimant have disability; and (3) was there an election of remedies. The hearing officer determined that claimant sustained an injury in the course and scope of employment; that she had disability from November 16, 1998, through February 27, 1999; and that claimant was not barred from recovering workers' compensation benefits due to an election of remedies. Appellant (carrier) appeals, contending that the evidence is insufficient to support the hearing officer's determinations regarding injury and disability. The determination regarding election of remedies was not appealed. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier challenges the sufficiency of the evidence to support the hearing officer's determination that claimant sustained a compensable knee injury in the course and scope of employment while stepping down from a 12-inch platform. It asserts that the action of stepping down from the platform is an ordinary activity or hazard to which the general public is exposed outside of employment.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained an 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 she worked inspecting windshields. She said her chair was on a platform that was 12 inches high and that when she saw a defect, she had to step off the platform and walk around to the other side to the controls. Claimant testified that on _____, she stepped off the platform and felt a pop in her knee. Claimant denied prior knee problems. She said she told her supervisor, that her knee began to swell, and that

she continued to work. Claimant said she went to the doctor the next day, that she had knee surgery November 18, 1998, that she was off work from that date through February 27, 1999, and that she returned to work thereafter. An operative report states that claimant underwent a right knee chondroplasty on November 18, 1998.

In this case, claimant testified that she sustained an injury at work while stepping down from a platform. The hearing officer considered the inconsistencies in the evidence referred to by carrier, resolved the conflicts in the evidence, and determined this issue in claimant's favor. We will not substitute our judgment for the hearing officer's because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain. Regarding the assertions that the specific injury from the action of stepping down from the 12-inch platform is an ordinary walking activity or hazard to which the general public is exposed outside of employment, we reject this contention. *See* Texas Workers' Compensation Commission Appeal No. 960307, decided March 25, 1996; Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998; Texas Workers' Compensation Commission Appeal No. 990351, decided April 2, 1999; Texas Workers' Compensation Commission Appeal No. 982801, decided January 14, 1999. The hearing officer could and did find that claimant was engaged in an activity originating in her work when she was injured. Texas Workers' Compensation Commission Appeal No. 972235, decided December 17, 1997.

Carrier next challenges the disability determination, asserting that because there was no compensable injury, there can be no disability. Because we have affirmed the injury determination, we also affirm the disability determination.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge