

APPEAL NO. 991928

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 August 13, 1999. The issues at the CCH were whether respondent (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that claimant sustained a compensable injury and that he had disability from February 19, 1999, to August 3, 1999, "and at no other time" up to the date of the CCH. Appellant (carrier) appeals, challenging 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 is not supported by sufficient evidence. Carrier asserts that claimant's testimony and evidence showed that he was not credible and that claimant did not offer diagnostic evidence showing an 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.

The hearing officer summarized the evidence in the decision and order. Briefly, claimant testified that he sustained a compensable injury to the back of his head, his low back, his hip, his right side, and his right leg on _____, when he slipped and fell backwards. In a February 22, 1999, office note, Dr. CO stated that claimant presented with right leg tingling and headaches, and that he "objectively exhibited multiple areas of subluxation complexes. . . ."

In this case, the evidence conflicted regarding whether claimant was injured at work. Claimant testified that he did sustain an injury in a fall at work. The hearing officer resolved the conflicts in the evidence. 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.

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. Carrier contends that claimant did not have disability because there was no compensable injury. We have already affirmed the hearing officer's disability determination, so we reject carrier's contention in that regard. Carrier also asserts that there is no evidence that Dr. CO kept claimant off work until August 4, 1999. However, claimant's testimony that, because of his injury, he did not return to work until August 4, 1999, 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 Stephens
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge