

APPEAL NO. 000047

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1999, a contested case hearing was held. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable right finger injury and that he had disability from July 15, 1999, to the date of the hearing. Appellant (carrier) appeals these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable injury to his right small finger is not supported by sufficient evidence. Carrier asserts that claimant was inconsistent in his descriptions of the mechanism of injury and notes that claimant denied a prior injury even though there was evidence that claimant had a healed old fracture to that same finger. Carrier contends that claimant and Dr. R did not provide credible evidence.

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). 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 on _____, he injured his right "pinky" while lifting garbage sacks as he worked as a garbage collector. He said he continued to work that day because there was no telephone on the truck, and that he reported the injury the next day. He said that "[Mr M]," an employee who gave out the paychecks, took him to see the company doctor on July 15, 1999. Claimant said he was told he had a broken finger. Medical records from Dr. S and Dr. R indicate that x-rays showed a healed old fracture and that claimant was diagnosed with a strain or sprain of his finger.

In this case, the evidence conflicted regarding whether claimant injured his finger at work. Claimant denied any prior finger injury and testified that he hurt his finger on

_____. 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, *supra*.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. We apply the Cain standard of review to this challenge. 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 that he could not do his work without the use of his finger 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, *supra*.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge