APPEAL NO. 000172

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 December 8, 1999. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from December 19, 1998, to the date of the CCH. Appellant (carrier) appeals, contending that claimant was not a credible witness. 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 while carrying a television is not supported by sufficient evidence. Carrier asserts that claimant was not a credible witness because she did not seek medical treatment until after her employment was terminated, she represented to the Texas Workforce Commission that she is able to work, and her testimony conflicted with the evidence from Mr. P, one of her supervisors, regarding reporting of the lifting incident at work. In a written statement, Mr. P denied that claimant had said anything about an injury until the date she was terminated.

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 her burden to establish an injury through her 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 and another employee, "J.R.," were carrying a television down some stairs when she missed a step and had to put the television down. She said that when she returned to the store, she told Ms. D about the incident and that she had hurt herself, and that Mr. P heard them talking and spoke to her about it. Claimant said she saw Dr. D on December 21, 1998, but that he said he could not treat her because she did not have insurance. She said she went to employer's premises the day after Christmas, but she was told that Ms. D and J.R. had been fired, that she did not have a job, and that "therefore, workers' comp did not exist." She said she went to an

attorney who sent her to Dr. B, and that Dr. B took her off work. Claimant testified that she attempted to work for another employer beginning November 3, 1999, but that she was able to work only two and one-half weeks because she could not tolerate the standing that was required. Claimant said she did not work from December 19, 1998, to December 28, 1998, because she was in pain. She testified that Dr. B took her off work on December 29, 1998, and that she is still unable to work. A January 1999 report from Dr. B states that claimant was diagnosed with lumbar facet syndrome and lumbar "sprain/strain." In a December 29, 1998, report, Dr. B stated that claimant may return to limited work on January 29, 1999. Off-work slips dated through February 1999 state that claimant is off work until March 2, 1999.

In this case, the hearing officer resolved any conflicts in the evidence regarding whether Mr. P heard claimant tell Ms. D about her injury. The hearing officer heard claimant's testimony and determined whether she was credible. 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. Claimant's testimony supports the hearing officer's disability determination. The record also contains some off-work slips from Dr. B. 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:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge