

APPEAL NO. 000258

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 30, 1999. In response to the issues at the CCH, the hearing officer determined that respondent (claimant) sustained a compensable injury and that she had disability from August 19, 1999, through September 22, 1999. The appellant (carrier) appeals these determinations on sufficiency grounds.. The appeals file contains no response from the claimant.

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 there was no objective medical evidence that claimant sustained an injury and the fact that claimant continued to work and delayed in seeking medical treatment shows that she did not sustain 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 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.

The hearing officer's decision sets forth fairly and adequately the evidence in this case and it will only be outlined here. Briefly, claimant testified that she injured her right arm and shoulder at work on \_\_\_\_\_, while pushing some heavy "totes." She said she heard a pop, that she thought it was not serious, and that she continued to work. Claimant said she stayed in bed the next two days and that she reported her injury the next day she worked during the following week. Claimant said she saw a doctor on August 19, 1999, after her arm continued to bother her. Claimant testified that Dr. V took her off work, that she saw him for five weeks, and that he performed therapy five days per week.

Claimant said she returned to work for another employer on September 23, 1999, making the same amount of money. She said her doctor told her she could return to work but that she could not lift over five pounds. In an Initial Medical Report (TWCC-61) Dr. V noted that claimant had right bicep myalgia. In a medical note, he noted supraspinous muscle spasm. Off-work slips from Dr. V state that claimant was unable to return to work from August 20, 1999, to October 1, 1999.

In this case, the hearing officer considered the evidence regarding whether claimant was injured. Claimant testified that she did sustain an injury at work and medical records show that she was treated and taken off work after August 19, 1999. 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. 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 and Dr. V 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 L. Stephens  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Robert W. Potts  
Appeals Judge