

APPEAL NO. 000319

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 10, 2000. The hearing officer determined that respondent (claimant) sustained a compensable injury in the course and scope of his employment on _____, and that claimant sustained disability beginning March 27, 1999, and continuing through June 19, 1999. Appellant self-insured ("carrier" herein) appealed the injury and disability determinations. Carrier asserts that claimant sustained an injury due to an idiopathic fall that is not compensable. The file did not contain a response from 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 claimant sustained an injury due to an idiopathic fall that is not compensable.

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.

Claimant, a firefighter, testified that on _____, he participated in vigorous training from 6:00 p.m. until about 10:30 p.m., which involved hands-on work building structures to hold up walls. Claimant said he was sweating the entire time and that he usually sweats a lot. He said he went back to the fire station that night and, before he went to bed, he fell against a wall when another man hugged him. He said the wall was not damaged, they got up and laughed, and he had no symptoms. He testified that the next morning he woke up at the fire station and had to go to the bathroom, that he felt like he was going to faint while at the urinal, and that he does not remember very much after that. Claimant said he woke up and his head hurt and was bleeding, and that he vomited. He said this fall the morning of _____, caused him to sustain a skull fracture.

An addendum to the emergency room note from _____, stated under "impression," that claimant had a "contusion, left temporal lobe," and "fractured right petrous bone all consistent with basilar skull fracture." In a March 30, 1999, report, Dr. S stated that EEG testing was being conducted "to insure that [claimant] does not have an underlying cause for his syncope" other than volume depletion. In a September 10, 1999, letter, Dr. L stated that even though claimant's blood testing did not substantiate volume depletion, "the most likely etiology . . . was the [claimant] had orthostatic syncope and that this was most likely related to volume depletion from [his] training exercises the previous night."

In this case, the evidence conflicted regarding whether claimant sustained a compensable injury on _____. There was evidence that claimant's fall on the morning of _____, was caused by volume depletion. Claimant testified that the night before he fell, he was engaged in strenuous training for about four hours which lasted until 10:30 p.m. Claimant said he was sweating during the training. In a March 1999 handwritten statement, Mr. L, claimant's coworker, said that claimant told him the night of _____, that he was "tired and dehydrated." The hearing officer resolved the conflicts in the evidence and decided what facts were established. He determined that claimant sustained a compensable injury when he fell the morning of _____. 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. Texas Workers' Compensation Commission Appeal No. 951066, decided August 8, 1995; Cain, *supra*.

Carrier contends that there is no credible evidence that claimant suffered from dehydration or volume depletion. Carrier asserts that claimant's blood chemistry profiles showed that his electrolyte and sodium levels were normal. However, both Dr. L and Dr. C indicated that a person could suffer from volume depletion even though tests showed normal sodium or potassium levels. Dr. L noted that there was no testing of claimant's uric acid levels, which might provide additional evidence. Carrier contends that Dr. L changed his mind about the cause of claimant's fall after he found out about claimant's fall against the wall on _____. In an October 1999 letter, Dr. L stated that he had been unaware that claimant had hit his head against the wall on _____. Dr. L said, "he apparently hit a wall hard enough with his head that it damaged the wall" and that the skull fracture could have been related to this. However, the hearing officer reviewed the evidence about claimant's fall on _____, and he determined what facts the evidence established. The hearing officer could consider the medical evidence from Dr. C and Dr. L, as well as the evidence about the training exercises, in determining whether claimant suffered from volume depletion which caused him to fall. Again, this involved a fact issue for the hearing officer. The hearing officer made a determination that the wall was not damaged after the _____, fall.

Carrier apparently contends that claimant's problems were caused by his fall the previous night. Claimant testified that another employee hugged him, they fell and claimant hit his head on the wall, and they got up and laughed. He said he was not dizzy and that

there was no damage to the wall. Although carrier contends that there was a “significant impact” and that the wall was damaged, claimant and his coworkers all stated that claimant was all right and that the wall was not damaged.

Carrier asserts that the hearing officer did not determine whether claimant suffered from volume depletion or whether there was merely an idiopathic fall. However, a reading of the decision and order indicates that the hearing officer determined that the fall was due to volume depletion.

Carrier notes that Dr. C, an anesthesiologist who did not examine claimant, is a friend of claimant’s and contends that the evidence from Dr. C was not credible and that the hearing officer did not consider it. There is nothing in the record to show that the hearing officer did not consider the evidence from Dr. C. Carrier did not contend that the hearing officer abused his discretion in admitting the evidence from Dr. C. We perceive no error.

Carrier next discusses idiopathic falls and Employers Casualty Co. v. Bratcher, 823 S.W.2d 719 (Tex. Civ. App. - El Paso 1992, writ denied). However, the hearing officer did not determine that there was an idiopathic fall in this case. The Bratcher case does not apply in this instance.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier’s only assertion is that claimant did not have disability because there was no compensable injury. We have affirmed the determination that there was a compensable injury and, therefore, we affirm the hearing officer's disability determination.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge