APPEAL NO. 000333

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 January 31, 2000. The issues at the CCH were whether: (1) the respondent (carrier) timely contested compensability within 60 days; (2) appellant (claimant) sustained a compensable injury on _____; and (3) claimant had disability. The hearing officer determined that claimant did not sustain a compensable injury on _____; that claimant does not have disability; and that carrier timely contested compensability of the claim. Claimant appealed only the determinations that she did not sustain a compensable injury and that she did not have disability. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant first contends the hearing officer erred in determining that she did not sustain a compensable injury. She asserts that: (1) she stayed in bed and rested after her injury; (2) she worked in pain when she went back to work; (3) carrier's witnesses were not there to see all the work she did on _____; and (4) carrier's witnesses were not truthful about whether she complained about her back. 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'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 back at work on _____, while sweeping, mopping, pouring water out of a bucket, and placing tape on the floor. In a November 4, 1999, report, Dr. A wrote "lumbar/sacral back strain" under "diagnosis." In a "statement of attending physician," Dr. A wrote under "when did injury occur." "possibly at home but she thought she aggravated back first by using

equipment at work." Claimant said she told her coworkers and supervisors that her back hurt, but this was denied by these witnesses, who testified at the CCH.

The hearing officer was the judge of the credibility of the evidence. As the fact finder, he considered the issue of whether claimant sustained a compensable back injury on _____, and resolved this issue against claimant. We will not substitute our judgment for his in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Claimant contends the hearing officer erred in determining that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Because there was no compensable injury, there can be no disability.

Claimant contends that evidence should not have been "used on her daughter" because it was personal. However, claimant did not object to questions about her daughter's hospitalization. Therefore, we perceive no error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge