

APPEAL NO. 000481

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 February 10, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from September 30, 1999, continuing to the date of the CCH. Appellant (carrier) appeals, contending that the hearing officer's determinations are not supported by the evidence. Carrier also complains that the hearing officer did not provide an impartial hearing. The file did not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable back injury is not supported by sufficient evidence. Carrier asserts that claimant's testimony that he sustained an injury was not credible.

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 testified that he sustained a compensable injury to his low back on _____, while lifting some totes onto a conveyor belt. He said he felt some tingling in his back, that he saw a doctor that day, that he was taken off work, that he had physical therapy and tried to return for a trial work day in late December, and that he could not do the work because of back pain. Claimant said he was unable to earn his preinjury wage from September 30, 1999, to the date of the CCH and that he has not been released to work. In an October 1999 medical report, Dr. W stated that claimant sustained an injury at work, that his diagnosis includes lumbar sprain and sciatica, and that this prevents him from going back to full duty. In a December 23, 1999, work status report, Dr. W indicated that claimant was released for a "work trial" on December 27, 1999.

In this case, the hearing officer heard the evidence and decided what facts were established. The hearing officer determined whether claimant was credible, whether he claimed an injury to avoid termination, and whether he was in an altercation on October 31, 1999, as contended by carrier. The hearing officer determined that claimant sustained a compensable injury. 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.

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 the medical evidence from Dr. W support the hearing officer's disability determination. Claimant testified that his back had been "fine" for a few days before the hearing. However, he had not yet returned to see the doctor and had an appointment scheduled for the next week. Considering the medical evidence about claimant's restrictions and the evidence about claimant's trial work day, we perceive no error in 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.

Carrier contends that the hearing officer did not provide an impartial hearing. We have reviewed carrier's contentions and the record and we perceive no reversible error. There is nothing to indicate that the hearing officer did not consider all the evidence.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge