

APPEAL NO. 000482

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 February 1, 2000. The hearing officer determined that: (1) the appellant (claimant) did not suffer a compensable hernia injury in the course and scope of his employment; (2) the date of injury is _____; (3) claimant did not have disability; (4) claimant timely reported the alleged injury to employer; and (5) employer did not make a bona fide offer in this case. Claimant appeals, contending that his hernia was sustained at work and that he had disability. Respondent (carrier) responds that the Appeals Panel should affirm the decision and order. The determinations regarding date of injury, timely reporting, and bona fide offer were not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he did not sustain a compensable hernia injury. He points to evidence that claimant was diagnosed with a hernia soon after a lifting incident at work and notes that there was nothing to show that he developed the hernia elsewhere.

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). 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 an injury working for (employer) sometime around _____, when he helped some men lift a piece of heavy machinery. Claimant said he felt sore and he knew something was wrong, but he was not sure what until the doctor told him he had a hernia. Claimant said he went to the emergency room on October 12, 1999, and he was sent to a specialist, Dr. W. Claimant testified that he underwent hernia surgery, that he was released to light duty in November 1999, and that he was released to full duty as of January 11, 2000. Claimant said he took the light-duty release to employer and he was told it would be better to wait until he received a full-duty release. Claimant said he is able to go back to work but he has not gone back to work for employer.

An October 12, 1999, emergency room report states that claimant complained of groin pain on the left "x 3 weeks," that claimant said he had blood in his urine, and that claimant gave a history of a prior right inguinal hernia repair. In an October 1999 medical note, Dr. W stated that claimant complained of a painful left inguinal area bulge, that he had a hernia as a young man, and that the bulge "comes and goes." In a January 2000 medical note, Dr. W said claimant had undergone hernia surgery, that he was still having some pain, that he had been released to light duty, and that he gave claimant a full-duty release.

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 hernia injury at work, and resolved this issue against claimant. The hearing officer apparently found that claimant's testimony that his hernia was work related was not credible. 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 he 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.

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