APPEAL NO. 000755

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 March 24, 2000. The hearing officer determined that: (1) appellant (claimant) did not sustain an injury in the course and scope of his employment; (2) respondent (carrier) is relieved of liability because claimant did not timely notify the employer of his injury; and (3) since there is no compensable injury, there can be no disability. Claimant appealed these determinations on sufficiency grounds. Carrier responded, contending 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 he did not sustain a compensable injury, that he did not timely report an injury, and that he did not have disability. He asserts that: (1) the medical evidence shows he has an injury; (2) Mr. F, a supervisor, testified that the incident occurred; (3) claimant testified that he reported it as soon as he knew he had a serious injury; and (4) there is no evidence to show that he 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). 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. Disability means the Ainability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.@ Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Generally, a claimant must report an injury to his employer within the requisite 30-day period, Section 409.001, unless there is good cause for failure to timely report the injury. Section 409.002(2). Where the claimant offers evidence that the supervisor was notified of the injury, but the supervisor testifies he or she was not notified, a question of fact exists for determination by the trier of fact. St. Paul Fire & Marine Insurance Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991.

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 summarized the evidence in her decision. Briefly, claimant said he was moving a heavy die plate at work on _____, when his foot slipped and he hurt his low back. Claimant said he continued to work that day and a few days after, that he thought it was just a sprain that would clear up, that his back became stiff and grew steadily worse, that he was off work with bronchitis for a few weeks, that employer terminated his employment when he returned back to work after New Year's Eve 2000, that he saw a doctor for his back after that time, and that he was taken off work. Claimant said that, a few days after the injury, he mentioned to one of the partners that he hurt his back at work. Claimant said that he Aformally@ reported the injury on January 14, 2000, after he found out from the doctor that it was more than just a back sprain. Mr. F, a supervisor, testified that he remembered an incident when claimant lifted a heavy die plate and claimant=s foot slipped, but said that claimant did not mention a back injury. Mr. B, one of the partners who owns employer, said that he and another partner first found out that claimant was claiming an injury when they received a letter from claimant dated January 14, 2000. A CT scan report states that claimant has a broad-based disc bulge, that there is mild compression of the thecal sac, and that the bulge abuts the left S1 nerve root.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, she considered the issue of whether claimant sustained an injury at work on _____, and when he reported it, and resolved these issues against claimant. The matters claimant raises in his brief involved credibility and fact issues, which were for the hearing officer to resolve. The hearing officer found that claimant was carrying the heavy plate, but that Athe evidence does not show that claimant sustained any damage or harm to the physical structure of his body as a result of that incident at work.@ The hearing officer noted that Athe evidence is contradictory regarding the events of _____.@ The hearing officer also determined that claimant did not have good cause for waiting until January 14, 2000, to report his _____, injury. The hearing officer is the sole judge of the credibility of the evidence. We will not substitute our judgment for hers in that regard because the hearing officer's determinations regarding injury and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. We also affirm the disability determination. 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:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge