

APPEAL NO. 001258

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 May 8, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) worked for the employer; that the claimant did sustain a compensable injury; and that the claimant did not have disability. The claimant appeals the disability determination on sufficiency grounds. The appellant/ cross-respondent (carrier or self-insured) appealed certain of the hearing officer's determinations, and contends that the hearing officer found no new injury citing, Continental Casualty Company v. Williamson, 971 S.W.2d 108, (Tex. App.-Tyler 1998, no pet.) for the proposition that the failure to contest compensability cannot create an injury, citing several Appeals Panel decisions. The carrier filed a response to the claimant's appeal.

DECISION

Affirmed.

The Decision and Order of the hearing officer fairly sets out the pertinent evidence. We briefly consider the carrier's assertion that the hearing officer erred in finding that the claimant sustained a compensable injury on October 2, 1999, and that the carrier waived the right to dispute compensability of the claimed injury by not doing so within 60 days.

The claimant testified she sustained an injury to her neck, both shoulders and lower back in a motor vehicle accident on _____, for which she sought medical treatment with Dr. B on June 29, 1999, and later with Dr. E on July 20, 1999. The claimant continued treatment with Dr. E and Dr. B through September 28, 1999. The claimant contended that she aggravated the preexisting injury to her neck, both shoulders and lower back on _____, while trying to restrain a young child at a youth shelter where she worked for the employer when she picked up the child's feet while being assisted by another coworker holding the upper extremities and torso of the child. The claimant continued to seek treatment for her neck, bilateral shoulders and lower back after _____, but also continued working until she was terminated along with other employees on November 29, 1999 as a reduction in workforce by the employer.

The claimant had the burden to prove that she injured herself as claimed on _____, and that she had disability as the result of the injury as that term is defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer determined that the claimant did have an injury to her neck, bilateral shoulders and lower back but that the injury was sustained on _____, and not in the course and scope of employment on _____. These findings have not been appealed and have become final. Section 410.169.

Regarding the timely contest of compensability, the carrier cites a number of Appeals Panel decisions involving interpretation of Williamson, *supra*. We have addressed this issue a number of times, including in Texas Workers' Compensation Commission Appeal No. 992780, decided January 26, 2000, where we quoted the Williamson court as saying:

We hold, therefore, that if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law.

We also wrote in Texas Workers' Compensation Commission Appeal No. 000604, decided May 10, 2000:

We have interpreted Williamson to mean that a carrier's failure to timely dispute does not create an injury only when there is no injury. If the claimant has established a condition that meets the definition of injury under Section 401.011(26), it does not matter that the cause of the injury may be outside the course and scope of employment because causation is no longer in dispute when a TWCC-21 [Payment of Compensation or Notice of Refusal/Dispute of Claim] has not been timely and properly filed. See Texas Workers' Compensation Commission Appeal No. 992584, decided January 3, 2000, and Texas Workers' Compensation Commission Appeal No. 981640, decided September 2, 1998 The carrier, in its appeal, would have us expand the holding of Williamson to apply to those cases where there is an injury, but the claimant fails to prove the injury was work related. This we decline to do because we do not believe it to be the correct interpretation of Williamson and because to so hold would effectively eliminate from the 1989 Act the requirement to timely dispute.

Regarding the issue of disability, as defined in Section 401.011(16), the claimant contends that the hearing officer erred in finding no disability. The claimant testified that she was taken off work on December 3, 1999, after she was terminated on November 29, 1999. The hearing officer was free to believe that the reason for the claimant's inability to obtain and retain employment at the preinjury wage was the reduction in workforce and not the injury. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find, and, consequently, the decision and order of the hearing officer are affirmed.

Kathleen C. Decker
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge