

APPEAL NO. 001491
FILED AUGUST 11, 2000

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 June 7, 2000. [The hearing officer] determined that the respondent (claimant) sustained a compensable injury and that he had disability from (day after date of injury), to December 16, 1999; December 19, 1999, to January 25, 2000; January 27, 2000, to April 19, 2000; and on May 29, May 30, June 1, and June 2, 2000. The parties stipulated that claimant's average weekly wage is \$243.00. Appellant (carrier) appealed the injury and disability determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on _____. Carrier asserts that claimant was not credible and the hearing officer should not have believed him because: (1) claimant gave different dates of injury in his testimony, statement to carrier, and statements to medical providers; (2) claimant gave conflicting statements regarding the mechanism of his injury; (3) claimant gave conflicting histories regarding whether any coworker witnessed his injury; (4) claimant's supervisor, (Mr. C), denied that claimant reported an injury to him on _____; and (5) claimant's coworkers said claimant injured his back working somewhere else. Carrier asserts that claimant was claiming a work-related injury in order to obtain drugs. Carrier also complains that the hearing officer chose to believe some evidence over other evidence without explaining her reasons for doing so. Carrier complains that claimant did not admit that he had begun working for another employer until after carrier obtained video surveillance evidence that he was working.

Claimant testified that he was injured on _____, his first day of work for (employer). He testified at the hearing that he was lifting a towel bucket, that he hurt his back, and that he went to his supervisor and reported an injury. In his recorded statement, claimant said that he was bending and twisting wiping down cars when he first felt back pain and then lifting a bucket of wet towels "contributed to it." Claimant's supervisor denied that claimant reported an injury that day. Claimant said his back continued to hurt that night, so he went to (hospital) the next day. Hospital records from (day after date of injury), state that claimant came in complaining of back pain, that he appeared to be in pain, and that he had muscle spasm and a stiff spine.

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.

A review of the decision and order indicates that the hearing officer believed claimant's testimony that he sustained a work-related injury on _____. The hearing officer was acting within her province as fact finder in deciding what evidence she believed. The hearing officer stated that she found that claimant was a credible witness. We have reviewed the record and we conclude that the hearing officer's determinations regarding whether claimant sustained an injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

Carrier contends that claimant was not credible because he stated various dates of injury. However, claimant testified that he was confused regarding the date of his injury. Claimant's medical records from January 28, 2000, also stated that claimant was "confused" regarding the dates. The hearing officer judged claimant's credibility in this regard and we will not substitute our judgment for hers. Carrier contends that claimant must have sustained a new injury on (subsequent date of injury), because, on January 28, 2000, claimant told hospital personnel that he injured his back on "(subsequent date of injury)," while lifting about 200 pounds. We note that medical records indicate that the day after the claimed injury, on (day after date of injury), claimant told medical personnel that he lifted about 200 pounds and "pulled every muscle in his back." Claimant testified at the hearing that this was a "figure of speech." Also, claimant testified that he confused the dates. We reject carrier's contentions.

Carrier complains that claimant was not credible because he gave conflicting histories regarding whether any coworker witnessed his injury. In his statement, claimant said he was working with other people but that no one was standing right beside him. In answers to interrogatories, claimant listed a coworker, (Mr. E), as a person with knowledge of the facts. Mr. E testified that on _____, he heard claimant indicate that he was in pain. We reject this contention regarding the hearing officer's credibility determination.

Regarding whether the hearing officer was required to believe claimant's supervisor's testimony or the testimony of coworkers who said claimant injured his back working somewhere else, we note that the credibility of the evidence was for the

hearing officer to decide. The hearing officer was required to make findings of fact regarding the issues, but was not required to explain why she did not credit certain testimony. However, we note that the hearing officer did offer the explanation that she found claimant to be a credible witness.

Carrier contends that the hearing officer erred in determining that claimant had disability. Carrier contends that claimant obtained a full-duty work release on January 24, 2000. Carrier also notes that claimant failed to tell carrier that he had returned to work for his new employer. The applicable law regarding disability and our appellate standard of review of sufficiency points of error are stated in Texas Workers' Compensation Commission Appeal No. 000032, decided February 18, 2000.

Claimant testified regarding the days that he missed work due to his injury. He said he missed work while working for employer and that he also missed some days of work while working for his new employer. Claimant said he asked for a release to return to work because he needed the money. A January 24, 2000, work-release slip states that it was requested by claimant. Claimant said he did go to work for employer at that time for a short period, and said that he would have tried to continue doing limited work at that point. Later medical records from (Dr. A) indicate that claimant was off work and that it was anticipated that he could return to limited work on March 20, 2000. Claimant said he began working for his new employer on April 20, 2000. In answers to interrogatories dated May 18, 2000, claimant said that he was currently employed and listed the name of his new employer.

Whether claimant had disability was a fact issue for the hearing officer. The hearing officer heard claimant's testimony, reviewed the medical evidence, and decided what facts the evidence established. The hearing officer determined that claimant met his burden to prove that he was unable, because of his compensable injury, to obtain and retain employment at wages equivalent to his preinjury wage during the periods testified to by claimant. Section 401.011(16). The hearing officer was the sole judge of the credibility of the evidence.

Carrier complains that claimant did not admit that he was working until after carrier obtained video surveillance evidence showing that he was working. However, the interrogatory answers indicate that claimant said he was working for his new employer and this interrogatory answer was dated before the date of the video surveillance during which investigators said that claimant was working. The hearing officer could consider this evidence in making her determinations. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge