

APPEAL NO. 002625

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 October 25, 2000. The hearing officer determined that respondent (claimant) sustained a compensable injury on _____; that he timely reported the injury; and that claimant had disability from January 27, 2000, through the date of the hearing. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury on _____. Claimant testified that he was in a motor vehicle accident (MVA) on that day and that he hit his head on the back of the window, causing a burning sensation in the back of his head. The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001392, decided July 24, 2000. The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. The hearing officer stated that she found claimant to be a credible witness and there were medical records showing that claimant was diagnosed with a cervical herniation. We have reviewed the record and we conclude that the hearing officer's determinations are 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).

Carrier contends the hearing officer erred in determining that claimant had disability from January 27, 2000, through the date of the hearing. Carrier asserts that claimant continued to work and that he had a subsequent MVA on January 26, 2000, after which he did not work. The applicable law regarding disability is discussed in Section 401.011(16) and Texas Workers' Compensation Commission Appeal No. 002025, decided September 29, 2000. Claimant said that he continued to work though he was experiencing symptoms and was later diagnosed with a herniated cervical disc. The medical records show that claimant was already being treated for his neck injury and undergoing diagnostic procedures before his January 26, 2000, MVA. Claimant said he was taken off work on January 27, 2000, and that he later had cervical spinal surgery. This evidence supports the hearing officer's disability determination.

Carrier contends the hearing officer erred in determining that claimant timely reported his injury. The applicable law and our standard of review are discussed in Section 409.001; Section 409.002(2); and Texas Workers' Compensation Commission Appeal No. 000981, decided June 20, 2000. Claimant said he was called in to bring an accident report, that the lead dispatcher he gave the report to asked if he was hurt, that he told her he did not believe he was hurt but that he "felt a hot burning sensation in the back of his

head” like he had been popped by a rubberband, and that the dispatcher then asked whether he would be able to go back to work. The hearing officer was the sole judge of the witnesses' credibility and expressly stated that claimant was credible. The hearing officer could find that claimant's August 19, 1999, report to Ms. D, the lead dispatcher, was a report of accident-related pain in the back of his head to a person in a supervisory or management capacity. We will not substitute our judgment for the hearing officer's because her determination that “claimant reported” the injury to Ms. D is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. We strike Finding of Fact No. 5 regarding “actual knowledge” as being unnecessary to the decision.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge