

APPEAL NO. 970799

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 April 7, 1997. With regard to the disputed issues at the CCH, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from September 30, 1996, through the date of the CCH. The appellant (carrier) appeals, seeking a reversal of the decision, and the claimant responds, seeking its affirmance.

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt his rendition of the facts. We discuss only those facts necessary to our decision. The claimant testified at the CCH that he injured his low back, legs and left shoulder in a motor vehicle accident (MVA) on _____ (all dates are in 1996, unless otherwise indicated). There was no dispute that the MVA occurred and that it occurred in the course and scope of the claimant's employment with (employer).

The carrier maintains that the claimant did not sustain a compensable injury as a result of the occurrence. It argues that the claimant was not injured because Mr. R, the employer's owner, and other employees did not observe him in pain. Mr. R testified that immediately after the MVA, he asked the claimant if he was injured and he responded in the negative. Mr. R testified that he was a volunteer emergency medical technician and, given his experience, he did not think the claimant was injured. He said he terminated the claimant due to past errors and the MVA. The carrier infers that the claimant lodged his claim out of spite for having been fired due to damaging the employer's vehicle. It cites the November 25th report of Dr. K, the carrier-selected required medical examination doctor, who opines that the claimant is capable of light-duty work and that he has "certain psychological barriers to recovery." However, Dr. B, the treating doctor, testified and pointed out that Dr. K agreed with him on many of his findings upon his examination of the claimant. The claimant admitted telling Mr. R that he was not injured, but said he felt pain the next day and went to the doctor the day after that. Dr. B testified that he examined the claimant on September 30th. He diagnosed a low back sprain or strain and reduced thoracic spine and lumbar spine range of motion. He testified that the claimant has been unable to work since the date of the injury. He explained that it is not uncommon for someone to sustain a back injury and not feel the effects until a few days later.

Whether an employee sustained a compensable injury is a question of fact for the hearing officer. He 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 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.

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). The determination as to an employee's disability is a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992.

We conclude that the determinations as to whether the claimant sustained a compensable injury and whether he had disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The decision is not against the great weight and preponderance of the evidence and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge