

APPEAL NO. 980979

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 14, 1998. The issues at the CCH were: (1) whether appellant (claimant) sustained a compensable injury; (2) whether claimant timely reported her alleged left knee injury; (3) whether claimant had disability; and (4) claimant's average weekly wage (AWW). The hearing officer determined that claimant twisted her knee at work in late August 1997 and began to feel pain, that she did not sustain a compensable injury, that she did not have disability, that her AWW is \$415.83, and that she did not timely report her alleged injury to her employer. Claimant appeals the injury, disability, and timely reporting determinations. The AWW determination was not appealed. The respondent (carrier) requests affirmance.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that she did not sustain a compensable injury. Claimant contends that the hearing officer should not have relied on taped interviews of claimant and internal records of the carrier, and that, instead, he should have relied on "the evidence" in making his determinations.

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). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and as disease naturally resulting from the damage or harm. Section 401.011(26). A claimant may meet the burden to establish an injury through the claimant's own testimony, if the hearing officer finds the testimony credible. See Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

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.

Claimant testified that she tripped and twisted her left knee at work on _____. In transcribed written statements, claimant stated that the incident took place in late August 1997. She said she told her supervisor, Mr. C, that day that she hurt her knee at work and that she needed treatment. She said she continued to work her shift that day and

that she continued to work for two months. In a transcribed written statement dated October 2, 1997, claimant said she had not yet sought treatment for her injury. When asked about the date of the incident, she also said that her injury took place in March or April of "last year." In a December 12, 1997, transcribed statement, claimant said that she reported a knee injury to Mr. C in late August 1997, that he asked her if it was related to an April 1996 incident when she hurt her knee at work, and that she had agreed with him that it could be related. Claimant then said that she did not believe that she told Mr. C that she had tripped at work in August 1997.

Mr. C testified that claimant did report an injury on _____, but that she told him that her knee problems were related to a prior April 1996 no-lost-time injury at work when she had hurt her left knee. He said he did not find out that claimant claimed an August or September 1997 new knee injury until December 15, 1997.

In an orthopedic questionnaire, apparently from the office of Dr. Z, it states that the date of the office visit was November 3, 1997, that the complaint was pain and swelling in the left knee, and that the "onset of symptoms or date of injury" is "1 ½ yrs." At the CCH, claimant agreed that she had filled out the questionnaire. It was not disputed at the CCH that claimant's knee was injured. Claimant said her doctor told her she had a torn meniscus in her left knee.

The hearing officer was the judge of the credibility of the witnesses and medical evidence. As the fact finder, he considered the issue of whether claimant sustained a left knee injury on _____, and resolved this issue against claimant. There was evidence that claimant had prior knee problems and the hearing officer could have determined that she did not sustain an injury or aggravation injury on _____. We will not substitute our judgment for his in that regard because the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Given our standard of review we will not overturn the hearing officer's decision. *Id.*

In this case, claimant also asserted that the hearing officer erred in considering transcribed statements made by claimant to an adjuster. Claimant asserts that the transcribed statements by claimant were not properly authenticated. Claimant contends that the hearing officer "refused to apply applicable evidentiary standards," apparently referring to the hearing officer's consideration of the above-mentioned evidence. The record reflects that when the transcribed statements were offered into evidence, claimant's attorney expressly said that he had no objection. Claimant was cross-examined about the statements she made to carrier and claimant acknowledged that she made the statements. Error, if any, was not preserved here. We further note that the hearing officer was entitled to consider the evidence before him, including these statements and the records from the carrier. He decided what weight to give to the evidence before him. We perceive no reversible error from any violation of evidentiary standards.

Claimant contends the hearing officer erred in determining that she did not have disability. 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). Because the hearing officer found there was no compensable injury, there can be no disability and we affirm that determination.

Claimant contends that the hearing officer erred in determining that claimant did not timely report her knee injury to her employer within 30 days of the date it occurred. Claimant asserts that the hearing officer's determination is against the great weight and preponderance of the evidence, that her injury took place on _____, and that she reported it to Mr. C that same day.

The hearing officer determined that claimant did not timely report her alleged August or September 1997 knee injury and that, when she reported an injury to Mr. C, she said she had injured herself in 1996. The hearing officer determined that: (1) claimant had sustained a previous left knee injury in 1996 when she slipped and fell, and that prior injury resolved; (2) claimant tripped on a rug at work in late August 1997, twisted her left knee, and began to suffer pain and swelling in the knee; (3) claimant had been experiencing left knee problems for a few months before the August 1997 incident; (4) on _____, claimant told her employer about a knee injury, but said her knee problems were due to the 1996 slip and fall and did not mention the August 1997 twisting of her knee; (5) on _____, claimant's employer notified carrier of claimant's left knee injury, and it was mistakenly indicated that the date of injury was _____; (6) claimant knew or should have known that her August 1997 tripping incident caused or may have caused her knee problems, but did not inform her employer of this alleged relationship until December 15, 1997; and (7) claimant did not have good cause for failing to timely report her alleged August 1997 injury within 30 days.

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 the failure to timely report the injury. Section 409.002(2). The purpose of the notice provision is to give the insurer an opportunity to immediately investigate the facts surrounding an injury. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). To fulfill the purpose of the notice provision, the employer need only know the general nature of the injury and the fact that it is job related. 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.

The hearing officer was the sole judge of the witnesses' credibility and obviously decided that Mr. C was credible when he said that claimant did not report an August or September 1997 injury on _____. There was evidence, in the form of a transcribed statement dated in October 1997, that claimant said her injury took place in 1996. In a later

transcribed statement, claimant said that she did not tell Mr. C about an August or September 1997 incident where she tripped at work. Therefore, there is evidence that supports the hearing officer's determinations. We will not substitute our judgment for that of the hearing officer because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant contends that the hearing officer erred in determining that the _____, date of injury indicated on an Employer's First Report of Injury or Illness (TWCC-1) was entered "mistakenly." Claimant contends that it is correct because the reported injury occurred on or about that date. The hearing officer was the sole judge of the credibility of the evidence. Ms. G, carrier's claim representative, stated that the date of injury stated on the form was in error. We will not substitute our judgment for that of the hearing officer because this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant also appears to complain that the hearing officer improperly entered a March 12, 1998, "ex parte discovery order," but does not indicate which evidence she complains of, or explain why its admission was prejudicial. We perceive no error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge