APPEAL NO. 980008

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 19, 1997, a contested case hearing was held. The Hearing Officer determined that appellant (claimant) did not show that he injured his left elbow at work on _____, and therefore had no disability. Claimant asserts that there was sufficient evidence to support a determination that claimant did injure his elbow at work. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant testified that he worked a few months for (employer) when he injured his left elbow on _____. He described his injury as occurring when he reached for a part, which weighed approximately 20 pounds, on a high shelf; he felt a sharp pain in his left elbow and the part fell out of his hand. He then obtained the part with his right hand. He said that he asked (TN), the manager, to pull his arm, adding that he told him he hurt it at work. When TN pulled the arm, it popped, and claimant said the elbow felt better, although it still ached. Claimant agreed that he continued to work until May 26, 1997, when he called his employer to see about going to a doctor.

(Dr. D) diagnosed epicondylitis on May 28, 1997, and said claimant should not work for at least two weeks. This record showed that claimant told Dr. D that he hurt his elbow reaching for a part at work. Claimant also saw (Dr. S) on September 7, 1997, and he diagnosed a possible ulnar nerve entrapment; the history recorded by Dr. S was consistent with that provided by Dr. D.

Claimant testified that he has not returned to work since seeing Dr. D and that he cannot work with his elbow injury, because he needs both arms to do transmission work.

TN testified that he recalled pulling claimant's arm at some unknown time but that claimant never indicated that he had hurt his elbow at work; TN thought the pulling was to alleviate a problem in the shoulder. TN said that when claimant called in on May 26th and said he could not work, he referred to a headache, not his elbow. (AN) testified that he owns the business. He said that he first learned of an alleged injury on May 27th; he talked to claimant in person then and claimant indicated that the injury occurred in late April. AN thereafter weighed a part similar to that which claimant described as causing the injury on _____ and said it weighed nine to 10 pounds. He also alluded to claimant's having told TN he had a headache, when he told him the next day that it was his elbow. AN opined that he did not believe claimant had been injured at work.

(Mr. M) testified that he worked with claimant and that claimant called him after claimant had stopped working and asked him to come with him to talk to claimant's lawyer. Mr. M did this and while in the lawyer's office, signed a statement. Mr. M testified that he had been in an accident himself and was on medication at the time he signed the statement and said that his "mind was not correct then." He testified that he did not hear claimant tell TN that he had injured his arm. He first heard of the alleged injury after claimant stopped working. He never heard claimant complain of the arm while at work. He also said that he would rather not be involved in this. The statement Mr. M signed provided the following:

> In typing: I was employed by (Company 1) on April 28, 1997.
>
> In writing: I was in the presence of [TN] and [claimant] I heard [claimant] tell [TN] that he had hurt himself.
>
> I heard [claimant] tell [TN] that he hurt his left elbow on the job.

Mr. M also said that the writing was not his, but that no one paid him anything to sign the statement.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. While claimant asserts that the evidence was sufficient to support a determination in his favor, that statement does not define the Appeals Panel standard of review of a factual determination. The Appeals Panel will only overturn a factual finding when it is against the great weight and preponderance of the evidence, a different question. Whether the hearing officer could have reached a different decision does not invoke any basis for reversal; rather the evidence is reviewed in light of the decision made by the hearing officer to see if that decision is supported by sufficient evidence, or the corollary, whether that decision of the hearing officer is against the great weight and preponderance of the evidence.

The testimony of claimant as an interested witness does not have to be accepted by the fact finder in regard to whether an injury occurred on _____. *See* Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). There were conflicts in the testimony between TN and claimant which the hearing officer as fact finder had to resolve. *See* Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). In addition, the hearing officer could choose to resolve the conflict between Mr. M's testimony and his signed statement by giving more weight to his testimony. In doing so, this too could affect the conflict between claimant's and TN's testimony. While a claimant may be found to have a compensable injury that appears minor at inception and later appears to be more serious, the hearing officer could also consider, in questioning whether a compensable injury occurred, that claimant was able to work for several weeks after the alleged injury and did not seek medical care promptly. That different inferences could be reached from the same evidence does not enable the Appeals Panel to overturn a decision of a fact finder. The evidence was sufficient to

support the decision of the hearing officer that claimant did not show that he was compensably injured. With an affirmed determination of no compensable injury, there can be no disability. *See* Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge