APPEAL NO. 980013

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 December 4, 1997. With regard to the issue at the CCH, he (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on _____. The claimant appeals, seeks a reversal of the decision and argues that it is against the great weight and preponderance of the evidence. The respondent (carrier) responds and seeks an affirmance of the decision.

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 on _____, he sustained a compensable injury when he slipped and fell on (employer's) oil rig. He said he was involved in a fight at a bar three weeks before, injured his hip as a result of a gunshot wound a few years before and injured his back falling off a rig 12 years before. He denied any problems associated with those prior injuries and explained that he injured his back _____, but did not immediately know the back pain he had was due to the injury. In the transcript of a recorded statement, the claimant's supervisor, (Mr. C), stated that the claimant went to the emergency room (ER) on _____, complained of the effects of the gunshot wound and said he had not been injured on the job. Signed, written statements from the claimant's wife and daughter confirmed his complaints of back pain following a _____, slip-and-fall injury. Mr. C's statement indicated that the claimant voluntarily quit his job on _____. The claimant testified that the coworker who provided his transportation to and from work quit on _____, and he told Mr. C he would have to find alternative transportation but he did not quit that day.

A July 7, 1997, ER report noted the claimant's complaints of back pain and stated that "[h]e denies injury to back but gives a hx [history] of 'slipped disc' 12 yrs ago + tx [treatment] [with] physical therapy." It also questioned whether lifting or a fight "a few days ago" may have been the cause of his pain. An x-ray revealed no evidence of an acute fracture and bullet fragments in his right lower pelvis. A July 15, 1997, ER report listed "gunshot wound lower back 15 yrs ago" and "back pain after having slipped." August 11 and October 9, 1997, reports from the claimant's treating doctor, (Dr. T) reflected the claimant's history of slipping and falling on the rig. Dr. T testified at the CCH that the claimant's symptoms were consistent with a slip-and-fall injury.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). An employee

has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer obviously placed more weight on the earlier ER reports and Mr. C's statement than on the claimant's testimony, his wife and daughter's statements and Dr. T's testimony. As finder of fact, he is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). There was a lot of conflict in the testimony, witness statements and medical records. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

According to the "Statement of the Evidence" portion of the decision, the hearing officer found the claimant presented insufficient evidence of a compensable injury and stated:

> This is based predominately, but not entirely, on the fact that the medical reports contain insufficient evidence that the Claimant told the emergency personnel people that he had slipped, contrary to the Claimant's testimony at the hearing that he specifically told them he had slipped when he went to the ER.

The claimant complains the statement reflects that the hearing officer held him to an improper burden of proof. We agree that the hearing officer erred if he required medical proof of the claimant's injury. An employee's "testimony alone, if believed and without corroborating medical evidence, could satisfy the burden of proof . . . ." Texas Workers' Compensation Commission Appeal No. 950176, decided March 8, 1995. However, we do not conclude that the hearing officer herein erred in his application of the burden of proof regarding a compensability issue. The hearing officer notes several other pieces of evidence which played a role in his decision making. Those factors include the inconsistencies between the claimant's statements to Mr. C and his CCH testimony, his report of the injury after quitting his job at the employer and his statements to Mr. C regarding the effects of the gunshot wound. Neither the inconsistencies in medical reports nor any one of those factors should defeat an employee's claim per se, but a combination of such factors may lead a hearing officer to doubt an employee's credibility and weigh the evidence against a finding of compensability.

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. We conclude that the determination is not so against the great weight and preponderance of

the evidence as to be clearly wrong or manifestly unjust and the hearing officer did not err. Therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge