APPEAL NO. 980084

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held, on December 10, 1997, with hearing officer. She determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from _____ until March 10, 1997. The appellant (carrier) requested review, urging that those determinations are against the great weight and preponderance of the evidence and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The claimant testified that on March 5, 1997, he had a disagreement with a coworker; that they had a discussion, but that he did not yell at her; that a supervisor sent him home early because of the incident; and that he returned to work the next morning at 8:00 a.m. He said that between 9:30 a.m. and 10:00 a.m. on _____, he was carrying a box of fire extinguishers that weighed about 60 pounds, that the top of the box was a little above his belt line, that he pulled a muscle at about his belt line, that he fell forward, that he landed with his stomach area on the box, that he rolled to the side, that he then landed on his back, and that he was injured in the stomach and groin area. He said that he was taken by ambulance to an emergency room (ER), that he was given medication, that he was released to light duty on March 8th and to full duty on March 10th, that he was terminated on March 12th because he missed work, that he still has pain if he lifts something, and that he has not returned to work because of the injury. He said that he filed a claim with the Texas Workers' Compensation Commission (Commission) on the day he was injured. The claimant stated that he was convicted of burglary on two occasions and of theft on two occasions. A medical report from the ER contains standard information about what to do when one is bruised.

The carrier contended that the claimant staged the incident and called four employees of the employer, three of them being in supervisory positions. (Ms. S) said that for about two weeks the claimant had been making mistakes in obtaining items to fill orders, that on March 5th she advised the claimant's supervisor, and that the claimant shouted at her. (Mr. F), the warehouse supervisor, stated that on March 5th Ms. S talked with the claimant's supervisor, that Ms. S and the claimant got into a yelling match, that he broke it up, and that he was present when (Mr. D) counseled the claimant and sent him home early. Mr. D testified that he sent the claimant home early, that he told him that he needed to control his temper, and that he told the claimant that if he could work without creating a disturbance he should return to work the next morning at 8:00 a.m. (Ms. B) testified that on

_____ she was about 20 feet behind the claimant, that he was carrying a box of fire extinguishers, that he did not stumble, that he fell forward, that he went down slowly, that another worker called his name, that he did not respond, and that she went for help. Mr. F stated that after he arrived at the scene, he tried to talk with the claimant, but that he would not respond.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer judges the credibility of witnesses and resolves conflicts and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look to all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant was injured in the course and scope of his employment and that he had disability from March 6th until March 10th are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge