

APPEAL NO. 980258  
FILED MARCH 25, 1998

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 in (City), Texas, on January 7, 1998, with (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) was not injured in the course and scope of his employment on \_\_\_\_\_, and that he did not have disability. The claimant appealed, urging that the great weight of the evidence is contrary to the determinations of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a compensable injury and had disability through the date of the hearing. The respondent (self-insured) replied, urging that the evidence is sufficient to support the determinations of the hearing officer and requesting that his decision be affirmed.

DECISION

We affirm.

The claimant testified and had exhibits admitted. The self-insured called three witnesses and had documents and a video admitted. The Decision and Order of the hearing officer contains a summary of the evidence and a detailed summary will not be repeated in this decision. The claimant contended that on \_\_\_\_\_, while he was operating a sewing machine he "felt an explosion" in his back from the top to the bottom and that he had difficulty breathing. He went to a doctor, was taken off work, two days later changed treating doctors to a chiropractor, and received therapy. The self-insured contended that he was not injured in the course and scope of his employment and that he had been counseled and had received two written notices concerning low production prior to the claimed injury.

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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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 determined that the claimant was not injured in the course and scope of his employment and that the claimant was able to obtain and retain employment at wages equivalent to his preinjury wages at all times after \_\_\_\_\_. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Gary L. Kilgore  
Appeals Judge

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Judy L. Stephens  
Appeals Judge