APPEAL NO. 980430

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 February 3, 1998, with a hearing officer. The appellant (self-insured) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____, The hearing officer determined that the self-insured timely contested the compensability of injuries to the thoracic and lumbar areas and that the claimant's low back and thoracic conditions are a result of the compensable injury. The self-insured appealed, urging that the hearing officer's determination that the claimant's low back and thoracic conditions are a result of the compensable injury is contrary to 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 that the claimant's mid and low back injuries, if any, are not a result of the compensable injury. The claimant responded, urging that the evidence is sufficient to support the appealed determination of the hearing officer and requesting that her decision be affirmed.

DECISION

We affirm.

The claimant taught school for the self-insured. On _____, an eleven-year-old student, who was about the claimant's size, assaulted her. The claimant testified that she was hit in the face, pushed against a steel beam, and thrown to the floor. She said that the student grabbed her, held her tightly, and rolled her over numerous times and that her head and all of her body, including her back, struck the floor as they rolled. The claimant stated that she went to (Dr. W) the next week; that she told him that her head, face, neck, back, and hand hurt; that she was sore all over, with her head and neck being the worst; and that she was given pain medication and muscle relaxers that helped. She testified that she became worse, that she saw several other doctors, and that she agreed with (Dr. RB) that she needs psychiatric care before she can return to work.

A report from Dr. W dated December 17, 1996, states that the claimant told him about the incident on _____, and that she was feeling somewhat better in that the soreness in her back and arms was not quite so severe. In a report dated January 6, 1997, Dr. W said that the claimant had had severe aches and pains since the incident and that they were slowly improving. Dr. W referred the claimant to (Dr. T), a neurologist. In a letter dated January 29, 1997, to Dr. W, Dr. T did not mention the low or mid back. A report from a physical therapist dated March 3, 1997, states that the claimant has a flattened lumbar spine. A report from Dr. W dated March 20, 1997, reflects that the claimant was tender from C6 to T4 with marked tenderness into the suprascapular areas; and a report from him dated April 15, 1997, contains a similar comment. A treatment plan of a physical therapist dated March 28, 1997, includes kinetic activity for the neck, upper extremities, and trunk.

The claimant completed a pain disability index questionnaire on May 6, 1997, and on drawings indicated aches in the upper thoracic area, but made no marks in the lumbar area. On June 24, 1997, Dr. W reported that the claimant was tender from C4 to T2 and from L4 to S1 with positive flexion test on the right with marked paravertebral muscle spasms present. In a report dated July 10, 1997, Dr. W reported that the claimant had marked paravertebral muscle spasms present throughout the cervical and lumbar spine. In a report dated August 7, 1997, (Dr. MB) stated that the claimant had mild thoracic outlet syndrome on the left and sacroiliac joint dysfunction on the right, that he did not find a record of complaints of injury to the sacroiliac joint at the time of the initial evaluation, but that he did not have a copy of the initial evaluation by Dr. W. A report of (Dr. R) dated August 20, 1997, states that the claimant reported that prolonged sitting or standing caused low back pain. On September 15, 1997, Dr. W's assessment included chronic cervical dorsal strain and lumbar sacral strain. In a letter dated November 20, 1997, Dr. RB reported that the claimant had myofascial pain syndrome affecting her neck, both shoulders, both arms, back, and both legs and needed certain tests and psychiatric care.

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. 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 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. In her Decision and Order, the hearing officer stated that the claimant was a credible witness and that her testimony and medical evidence supported her claim. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its judgement 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). That a different determination could have been made based upon the same evidence is not a sufficient basis to overturn a determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the appealed determination of the hearing officer is 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 it. 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 appealed determination of the hearing officer, we will not substitute our judgement 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:

Gary L. Kilgore
Appeals Judge

Christopher L. Rhodes
Appeals Judge