APPEAL NO. 990175

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 30, 1998. He (hearing officer) determined that 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 overwhelming weight of the evidence is against the determinations of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (carrier) 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 employer makes telephones. The claimant supervised about 25 employees who worked the 3:00 to 11:00 p.m. shift repairing telephones. The claimant had been attending college courses and the employer reimbursed him for tuition expenses. Mr. P, the employer's production manager in the product repair center, testified that the claimant had sometimes missed two or three hours of work a shift because he was attending classes. He said that in the spring of 1998, the claimant had been counseled, was told that he had to be at work during his entire shift, that he was permitted to continue the classes for that semester, and that he was told that they could look at changing shifts if necessary for him to complete his classwork. Mr. P said that the next semester began in early July; that in August the claimant brought him the form for reimbursement for tuition; that he then learned that the claimant was taking 19 hours that semester and that class time overlapped with working hours; that the claimant was told that he was required to be at work from 3:00 to 11:00 p.m.; and that the counseling report in evidence dated August 14, 1998, was made. Ms. S testified that she is the senior human resources representative for the employer, and that she was present during the counseling session on August 14, 1998. The claimant testified that he was reprimanded in August 1998, that he was told by Mr. P that he needed to be at the job or take vacation hours, that he was asked to reduce his course load to nine hours, that he needed 19 hours to graduate, that he wanted to finish his college work, and that he did not reduce his college courses. He said that on _____ (later he said that it was Alleged injury), he went to the restroom at about 7:00 p.m.; that he slipped on the wet floor, but did not fall to the floor; that he hyperextended his back; that he finished his shift; that at about midnight he started having swelling in his groin; that he thought that he had pulled a muscle; that the next morning he had swelling in his lower back; that he left a message for Mr. P telling him what had happened; that he went to class; that he called Dr. T, his family doctor; that Dr. T was not available; and that he went to (medical facility). The claimant stated that he went to Dr. T on September 1, 1998; that Dr. T took him off work; that he went back to Dr. T on September 9, 1998, when Dr. T took him off work for two weeks; that the carrier denied the claim; that he then went to Dr. K, a chiropractor; that Dr. K took him off work; and that he continued to go to class. Medical

records from Dr. T and Dr. K indicate that the claimant told them that he slipped on a wet floor. An employee supervised by the claimant testified that he saw the claimant using weight machines at a health club on October 11, 1998, and the claimant testified that that was the first time that he had done that after he was injured and that he did it at the direction of Dr. K.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment, Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991, and that he had disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. 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 because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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 history of a claimed injury provided to a doctor by the claimant and contained in the medical report is not binding on the hearing officer. In his Decision and Order, the hearing officer stated that the claimant was not persuasive that he injured himself at work and that, if he had injured himself at work, that he was unable to obtain or retain employment at the preinjury wage because of that injury. An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own 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 determinations of the hearing officer that the claimant was not injured in the course and scope of his employment 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 his. 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