APPEAL NO. 990287

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 12, 1999, a contested case hearing (CCH) was held. With regard to the only issue before him, the hearing officer determined that appellant's (claimant) compensable injury of (date of injury no. 1), was not a producing cause of claimant's low back condition.

Claimant appeals, reciting the history of his injuries and emphasizing medical evidence which he believes supports his position. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) urges affirmance. We do note that portions of carrier's lengthy boiler plate response, if it even deals with this claimant, mentions doctors and medical reports not in evidence and discusses at length issues which do not even pertain to this case (*i.e.,* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e))) and the law of change of treating doctors, naming doctors and attributing statements to the hearing officer that were never made in this hearing.

DECISION

Affirmed.

Claimant was employed as a delivery supervisor by (employer). Claimant had a previous (presumably compensable) right inguinal hernia injury, not at issue here, in December 1996 and had a hernia repair on January 30, 1997. Claimant's treating doctor was Dr. M. Claimant said that he was off work two or three weeks due to that injury, then returned to light-duty work and eventually back to his regular duties. Claimant testified that he had some back complaints at that time but none are noted in Dr. M's medical records. Dr. M's report of August 19, 1997, recited the hernia repair, uneventful recovery, no recurrence, some complaints "of occasional pain in the right groin" and estimated to have a zero percent impairment.

Claimant testified that on the afternoon of (date of injury no. 1), he and a coworker were delivering a heavy washing machine and carrying it up a flight of stairs (claimant was on the low end) when he "felt a real bad pain and strain on my right groin" and that his right leg "got weak." Claimant said that he finished the delivery, left a note for his supervisor and left work early to go to the doctor. Claimant went back to Dr. M. (A later report states that Dr. M saw claimant on (date of injury no. 1), but there is no contemporaneous progress note of a (date of injury no. 1), visit.) An October 1, 1997, progress note notes the washing machine incident "yesterday" and complaints of right groin pain. Claimant testified that he also complained of back pain but no back complaints are noted in Dr. M's 1997 records. Claimant testified that he continued to treat with Dr. M, who subsequently referred claimant to Dr. J, a pain specialist. No contemporaneous records from Dr. J are in evidence and claimant does not refer to Dr. J in his appeal. (A subsequent March 1998 reprt refers to right-sided groin pain of unknown etiology which could be "secondary to L2-L3 radiculopathy.") Claimant testified that after his second visit with Dr. J, as he was picking

up his son at school, he "got a real sharp pain in my back. I felt numbness in my leg." Claimant said this occurred two or three weeks after the washing machine incident and that he had been terminated by the employer for other reasons on November 7, 1997. In a follow-up progress note of December 5, 1997, Dr. M refers to claimant's groin pain and that it "comes & goes." In a typed report of that same date, Dr. M write :

> While working on **(date of injury no. 1)** the patient was lifting a heavy object when he felt pain and tenderness in the right groin again. He returned to the office on 10/1/97 due to this **new and separate injury**. [Emphasis in the original.]

In a progress note dated December 29, 1997, Dr. M notes: "working on car wk ago felt bad pain & swelling ® side." Although claimant in his appeal states that Dr. M noted back pain on January 19, 1998, our review of a progress note of that date does not indicate that to be the case. Dr. M first mentions back pain in a progress note dated February 19, 1998, when he states "F.U. Ins denied visits [with] [illegible] still having pain in ® leg and into back." This is the first mention of back pain. Claimant was referred to Dr. P. Dr.M wrote Dr. P in a letter dated March 19, 1998, reciting a brief history and asking for an opinion on causation, stating:

> Initially it was treated as possibility of contusion ys [sic] early hernia. As it did not settle down he was referred to [Dr. J] for pain management consult. He had questioned possibility of this pain originating from his spine. Patient does complain of pain in lower back with radiation into his right buttock from time to time. He says this pain started the same time when he had pain in his right groin.

In a report dated March 30, 1998, Dr. P recites a date of injury of "(date of injury no. 2)" with a history of "Unloading a Dryer[,] Slipped on Ice fell back." (This is apparently how the December 1996 injury occurred.) Claimant, at the CCH, admitted he gave Dr. P an incorrect history of the (date of injury no. 1), injury. Dr. P opines that "the patient has a discopathic etiology for his back pain with associated isthmic spondylosis with spondylolisthesis." Dr. P comments that the likelihood of the spondylosis and spondylolisthesis as being acute "is relatively small." In a report dated August 13, 1998, addressed to claimant's attorney, Dr. P writes that Dr. J's and Dr. M's notes "are terribly important" to "see and understand what the patient was saying." Dr. P concluded:

> I believe that there is a reasonable likelihood of there being a relationship to the patient's presenting pain and a spinally mediated pain source even though the importance of the spine did not become apparent until a number of months after the injury in question.

In another report, dated August 24, 1998, Dr. P states:

> At this point in time, therefore, based on what I believe is a new injury event in the autumn of 1997 different from the event in which the patient sustained his hernia (January, 1997), I believe the patient's problem is indeed spinally mediated and I believe that it is work related!

Dr. R, the designated doctor, in a report dated August 25, 1998, had an impression of lumbosacral strain/sprain, mild to moderate, but opined that it was "probably not related to the compensable injury of (date of injury no. 1) based on history and progression of symptoms."

Claimant gave recorded statements on December 29, 1997, and September 17, 1998, which had certain inconsistencies with each other and claimant's testimony at the CCH. Dr. C did a record review and, in a report dated August 18, 1998, commented that an MRI showed claimant had degenerative disc disease at the L5-S1 level and that "a degenerative disc at L5-S1 could not cause pain in the abdominal or groin area."

The hearing officer, in his Statement of the Evidence, comments:

> Claimant's evidence is insufficient to establish that the compensable injury of (date of injury no. 1) is a producing cause of his current low back condition. The absence of documented complaints of back pain for over four months coupled with the last [sic, lack] of any definitive medical support results in a failure to produce sufficient credible evidence to meet Claimant's burden of proof on this issue.

Claimant, in his appeal, points to the various notes and reports of Dr. M and to Dr. P's reports of March 30, 1998, and August 13, 1998, as medical evidence that connect claimant's back pain to his compensable injury of (date of injury no. 1).

The evidence was in conflict and subject to varying interpretations. Claimant testified that his back hurt both before and after the (date of injury no. 1), washing machine incident and that he complained to Dr. M, yet Dr. M's notes and reports make no mention of this until January or February 1998. Although Dr. P appears to make a causal connection, Dr. P was, at least initially, given an incorrect history of how the accident occurred. We have frequently noted that 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. 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). 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 manifestly 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 own judgment for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly 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 Company, 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.

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Philip F. O'Neill
Appeals Judge