APPEAL NO. 990331

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 January 15, 1999. It is undisputed that the respondent (claimant) sustained a compensable injury on _____. The hearing officer made the following findings of fact:

FINDINGS OF FACT

5. Claimant was released to return to work by the company doctor.

6. Claimant tried to work but was unable to continue working because of this injury.

7. Claimant was not able to continue her schooling because of this injury.

8. Claimant had difficulty obtaining authorization for continued medical treatment.

9. Claimant's Treating Doctor took Claimant off work on January 28, 1998, because of this injury.

10. Claimant was not able to work from January 28, 1998, through the date of this Hearing as the result of her compensable injury.

The hearing officer concluded that the claimant had disability beginning January 28, 1998, and that the disability had not ended as of the date of the hearing. The appellant (carrier) requested review; urged that Findings of Fact Nos. 6, 7, 8, and 10 and the conclusion of law are against the great weight and preponderance of the evidence; stated evidence favorable to its position; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that she injured her foot on _____, when a pallet fell on her foot; that she was immediately referred to a medical group used by the employer; that x-rays were taken and she was told that nothing was broken; that she was returned to work on November 14, 1997; that on that day she could not walk without the assistance of a crutch; that she was told that she was a liar and a malingerer; that on December 5, 1997, she requested a change of treating doctors; and that the request to change treating doctors was approved on January 8, 1998. She said that she went to an orthopedic and

rehabilitation center where she was seen by Dr. L, an orthopedic surgeon, and Dr. S, who supervised her treatment; that she was told that ligaments had been crushed and torn and that she had developed scar tissue because the medical group had refused to treat her; that on January 28, 1998, Dr. S took her off work; that from that date until May 1998, she sought treatment, but the carrier would not pay for the treatment; that she went to her attorney, who referred her to Dr. B, a chiropractor; that in early May 1998, Dr. B saw her out of human kindness and agreed to treat her; that she saw him a few times and received some treatment; that on August 24, 1998, treatment was approved; and that she began receiving treatment three days a week. She testified that Dr. B referred her to Dr. N; that she saw Dr. N three or four times; that Dr. N diagnosed tarsal tunnel syndrome and told her that she may need surgery; and that he prescribed anti-inflammatory, muscle relaxer, and pain medication. The claimant stated that she was taken off work by doctors, that only the company doctor returned her to work, that she is not able to work, and that she has not worked or gone to school since she was injured.

A report from the medical group dated November 14, 1997, states that the claimant can return to work and was to avoid standing, walking, and lifting. In a note dated January 28, 1998, Dr. S took the claimant off work until further notice. In an Initial Medical Report (TWCC-61) dated June 4, 1998, Dr. B said that the claimant was having constant pain over the left foot with pain radiating up the leg; that conservative physical therapy would be used; and that an x-ray radiologist report would follow. Off-work slips from Dr. B dated in August, September, October, and November are in the record. The last one in the sequence is dated November 11, 1998, and states that he recommended that the claimant be excused from work until December 2, 1998. In a report dated October 28, 1998, Dr. N stated that he prescribed medication; that the claimant would continue treatment and therapy with Dr. B; that he would see the claimant in three or four weeks; and that if symptoms persisted, release of the tarsal tunnel may be considered.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). The burden is on the claimant to prove by a preponderance of the evidence that she 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. 91023, decided October 16, 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). 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. 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). 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). In its appeal, the carrier contends that the claimant did not receive medical treatment during much of the time that the hearing officer determined that the claimant had disability. In his Decision and Order, the hearing officer indicated that he considered the claimant's testimony that the carrier would not authorize treatment and that she received periodic treatment while her attorney was trying to get medical treatment authorized by the carrier. The hearing officer's determination that the claimant had disability from January 28, 1998, the date she was taken off work by Dr. S, through the date of the hearing is 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). The evidence is sufficient to support the appealed findings of fact and conclusion of law.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge