APPEAL NO. 990347

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 17, 1998. The hearing officer determined that the appellant (claimant) did not sustain an injury to his lower back in the course and scope of his employment on _____, and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a four-page statement of the evidence. The claimant began working for the employer on August 3, 1998. It is undisputed that the claimant missed work on part of two days that week. He testified that he told the foreman in advance that he would miss work because of a medical appointment and a court appearance. The foreman testified that the claimant did not tell him about the absences in advance. The claimant testified that on _____, he injured his low back lifting a box that weighed over 100 pounds; that he did not think it was serious; that he wanted to keep his job and did not tell anyone that day; that after he went to his apartment after work, his back pain became worse; that he stayed in bed for three days; and that on Monday morning he told the foreman about the injury. The foreman testified that he did not know why the claimant was not at work on Friday that he advised an office worker that afternoon that the claimant was terminated; and that on August 10, 1998, the claimant told him that he hurt his back at work on _____. The claimant went to an emergency room on August 10, 1998; to a doctor who treated backs on August 12, 1998; and to an emergency room on two other occasions; was prescribed medication; and was taken off work.

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. 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. At the hearing, both counsel stated that credibility would be important in resolving the disputed issues. In his Decision and Order, the hearing officer stated that he found certain testimony of the claimant to be incredulous. 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 hearing officer's determination that the claimant was not injured in the course and scope of his employment on _____, 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). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability is defined as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Susan M. Kelley
Appeals Judge