

APPEAL NO. 990368

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 4, 1999. The hearing officer determined that the appellant (claimant) was not injured 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, summarized evidence that he thinks established that he was injured in the course and scope of his employment, stated that witnesses who testified adversely to his interests did so to keep their jobs, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he was injured in the course and scope of his employment and had disability. The respondent (carrier) replied, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The claimant testified that he worked for the employer as a sheet metal worker; that on Wednesday, _____, he and other workers were installing a metal roof; that the roof was wet; that at the start of the workday, he slipped, twisted his back, and put his hand down on the roof to keep from falling; that Mr. R saw him fall and asked if he was all right; that Mr. BC did not see him fall but heard the noise; that he worked the remainder of the workday; that he took Tylenol after he got home; and that he worked until the weekend. He said that on October 20, 1998, he went to Dr. HC, who had performed surgery on his back for an earlier injury; that he told Dr. HC that he had a hard day at work; that he did not know what had happened and that he was in major pain; and that Dr. HC took an x-ray and had an MRI performed, and told him that he had a new injury, a herniated disc at L3-4. The claimant said that that morning he told Mr. T, his supervisor, about the accident and that the next day he went to Mr. T's house and again told him what had happened. He said that Mr. R told him what he had seen; that he, the claimant, had his wife type a statement for Mr. R based on what Mr. R had told him; and that Mr. R signed the statement. The claimant stated that he was taken off work by Dr. HC, that he has not been released to return to work by any doctor, and that he is not able to work because of his back injury. Mr. G testified that he has known the claimant for about eight years; that the claimant had fully recovered from his prior back injury and had worked for years after the prior injury; that he complained of backache but no intense pain in the past; and that on _____, the claimant was down in his back.

Mr. BC testified that he did not see or hear the claimant slip and twist his back on _____; that he is hard of hearing and probably would not have heard a slip and fall; that the claimant gave him a statement to sign; that he had previously given a statement to the carrier and the employer; and that he did not sign the statement given to him by the claimant. Mr. R testified that he has known the claimant for about three years; that about

every day the claimant complained about his back; that he did not see the claimant slip, twist, and put his hand down; that he does not read and write; that he signed a statement given to him by the claimant to help out the claimant; and that he did not read the statement, but the statement was read to him. At the hearing, the statement that Mr. R signed was read to him and he stated that the statement was not true. Mr. T testified that the claimant told him he was going to go to a doctor to have his back checked, that at that time the claimant did not say anything about an incident at work, and that after the claimant returned from the doctor for the first time he said something about an incident at work. Mr. T said that the claimant came to his house to get a tool or that he went to the claimant's house to get a tool, but that during such a visit the claimant did not tell him he slipped and twisted his back.

A report of Dr. HC dated October 20, 1998, states that he had not seen the claimant for about two years, that the claimant said he had been doing well, that about three weeks ago after working heavy that day the claimant went home and had difficulty walking secondary to severe back pain, and that the claimant was prescribed pain medication and was taken off work. On October 27, 1998, Dr. HC reported that the claimant was not better; that he recommended an MRI; and that he felt the claimant had sustained a new work-related injury. In a report dated December 8, 1998, Dr. HC said that the MRI revealed the claimant had a herniated disc at L3-4; that the herniation was above the solid fusion from prior surgery; and that he thinks the claimant has a new work-related injury.

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 an injury, 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 at 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. Credibility was a key factor in deciding whether the claimant was injured in the course and scope of his employment. In his Decision and Order, the hearing officer pointed out inconsistencies in testimony of witnesses and inconsistencies between the claimant's testimony and history the claimant provided Dr. HC; stated that he had credibility problems with the testimony of the claimant, Mr. R, and Mr. T; and said that the claimant's evidence was not persuasive that he was injured in the course and scope of his employment. 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). The hearing officer's determination that the claimant was not injured in the course and scope of his employment 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, 224 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 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 to be sufficient to support the determination that the claimant did not sustain a compensable injury, we also affirm the determination that the claimant did not have disability.

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