APPEAL NO. 990430

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 5, 1999. The determined that the claimant's low back pain is the result of a "locked" Sacroiliac joint; that the "locked" Sacroiliac joint was not caused by her employment activities; that she did not sustain a compensable injury on _____; that as the result of a prior compensable injury and the "locked" Sacroiliac joint the claimant has been unable to obtain and retain employment at wages equivalent to her preinjury wage beginning on _____, and continuing through the date of the hearing; and that since the claimant did not sustain a compensable injury on _____, as claimed, she did not have disability as the result of the claimed injury. The claimant appealed; urged that her testimony and a letter from Dr. P established that she was injured in the course and scope of her employment on _____; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The carrier responded, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence, including the text of the letter from Dr. P that the claimant contends establishes that she was injured in the course and scope of her employment on _____. Only a brief summary of the evidence will be included in this decision. The claimant worked for the employer, a manufacturer of air conditioning units, for about 19 years. She testified that she sustained bilateral carpal tunnel syndrome (CTS) injuries sometime in the 1980s and had surgery; a low back injury in 1986 or 1987 that resulted in a fusion; repeat bilateral CTS injuries that required repeat surgery in 1993 or 1994; and injury to her wrist with pain radiating into her arm and shoulder in (prior date of injury). She said that she was referred by Dr. P to Dr. L, a hand surgeon, for the 1997 injury; that Dr. L diagnosed tendinitis; and that she was taken off work. The claimant stated that she returned to work on July 6, 1998; that she was given a job using a "sniffer" to check for freon leaks in small air conditioners; that she was able to do that work sitting down; that on _____, she was moved to another job in which she checked for freon leaks in larger units; that she is short and had to step on a platform about eight inches high to do the work; that she had to reach into the unit and bend to check for leaks; that she had to move some of the units on the belt; and that she had to bend to place a label on the units. Another employee of the employer testified the job of using the sniffer is designed especially for workers returned to work at light duty, that the platform is provided for short employees, that persons do not have to bend to check for freon leaks, that the labels are placed on an upper corner of the units,

that some units need to be shifted on the belt, that the units are in a “buggy” on the belt, and that it is not difficult to shift the units on the belt.

In his letter dated October 8, 1998, Dr. P said that physical examination suggested a locked Sacroiliac joint; that that phenomenon could occur in a susceptible person with relatively minimal activity; and that he thought that the claimant’s bending and twisting activity on _____, could have resulted in the joint problem.

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 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). The hearing officer found the other employee’s testimony about the job of a “sniffer” to be more credible than that of the claimant; determined that under the circumstances medical evidence was necessary to establish an injury on _____; stated that the use of "could" by Dr. P did not rise to the level of reasonable medical probability; determined that the claimant’s work activities from July 6 to 14, 1998, did not aggravate her prior injury or result in a separate compensable injury; and concluded that she did not sustain a compensable injury on _____. The conclusion that the claimant did not sustain a compensable injury 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 conclusion of the hearing officer, we will not substitute our judgment for his. Texas Workers’ Compensation Commission Appeal No. 94044, decided February 17, 1994.

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). Since we found the evidence to be sufficient to sustain the determination that the claimant did not sustain a compensable injury on _____; she cannot have disability from that claimed injury.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge