APPEAL NO. 990815

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 8, 1999, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1998 unless otherwise noted), and that claimant did not have disability.

Claimant appeals, contending inadequacy of counsel and that he continues to have pain and is unable to obtain medical attention. Claimant asks our advice about attending a CCH on June 9, 1999, and alleges that the hearing officer "didn't do her job right." Inferentially, claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds that claimant's request for review does not clearly and concisely challenge any of the hearing officer's determinations, but otherwise urges affirmance.

DECISION

Affirmed.

The evidence is substantially in conflict. Claimant was employed as a truck driver for a number of years by (employer). Claimant testified that on _____ he and his supervisor, Mr. JS, were unloading packages of steel toilet partitions, when one side of a package slipped and he injured his right shoulder, low back, neck and possibly his right leg. There is considerable dispute and contradiction about how many partitions were in a package (although it is undisputed the packages were very heavy), the mechanics of the injury, whether the right leg had been injured some months earlier, and whether Mr. JS was aware of the alleged injury (in a statement and another transcribed interview, Mr. JS denied any knowledge of the injury). Also in conflict is testimony and evidence whether claimant felt "immediate pain" or just felt a "crack or pop" without the onset of pain at that time. Claimant continued working on Thursday, _____, and Friday, October 9th (but claimant said he did no heavy lifting on October 9th). Claimant testified that either the pain began or got worse over the weekend and that he sought medical care at the (VA) hospital on Monday, October 12th. There was also testimony that claimant, at times in the past, had requested and received advances or loans against his salary from Mr. MB, employer's owner, and that on or about October 6th, Mr. MB had denied claimant's latest request for an advance for car repairs and had told claimant that he would have to take the bus to work, which he did October 7th through 9th. (Carrier alleges this is a retaliation claim for Mr. MB's refusal to grant another advance.)

The only medical evidence from the VA hospital is a "Medical Certificate" giving a date of "5-12" (no year is given), showing claimant having a "[p]roblem with my kidney" and complaining of "lower back pain [with] sometimes tingling on (L) [illegible] pain on leg. Pt works [with] heavy lifting also neck pain." Claimant subsequently saw Dr. G, who, on an Initial Medical Report (TWCC-61) dated October 15th, recited a history of "a pop to his low

back. Immediate pain was felt to his right shoulder and arm as well as his neck area." Dr. G recites a date of injury as October 9th and that claimant was unable to get out of bed the next day. Dr. G recites that claimant had back surgery in 1971 and prescribed pain medications and anti-inflammatory medication. Dr. G took claimant off work. In follow-up reports dated October 19th and 26th, Dr. G gives an impression of lumbar, cervical and right shoulder strain, and requests authorization for a CT scan and MRI. Claimant was continued off work. Right shoulder and cervical x-rays of October 15th showed degenerative arthritis and a lumbar x-ray showed "lumbar osteoarthritis, probable multiple gallstones."

Claimant subsequently changed treating doctors to Dr. S, who, in a report dated January 18, 1999, noted a history of immediate pain "severe, tearing, localized in his low back, and later radiating to the right leg above the knee posteriorly." Dr. S notes that claimant has had three weeks of physical therapy from Dr. G and that claimant was "frustrated and angry about his current situation." Dr. S assessed "chronic low back pain," musculoskeletal pain, depression and insomnia.

In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), claimant alleges injuries to his "Rt Leg, Rt Arm, Lower Back and Neck," indicating representation by an attorney. There was also a dispute at the CCH whether claimant had refused to attend a required medical examination by carrier's doctor. The hearing officer, in her Statement of the Evidence, commented that claimant's "explanation of how and whether he was injured was too incoherent and inconsistent to be credible."

Claimant, in his appeal, expresses dissatisfaction with his attorney, who was an attorney different than the one that represented him at the CCH, and that he "didn't represent the way he was paid to do." Neither we nor the hearing officer, for that matter, will rule on the quality of the services rendered by an attorney and, generally, a party's dissatisfaction with his or her attorney does not constitute a ground for reversing the hearing officer's decision. Further, claimant's dissatisfaction with his attorney appears based on the attorney's withdrawal and refusal to represent claimant on appeal. That is certainly something between a client and the attorney, and we decline to advise claimant regarding future representation. Regarding claimant's contention that the hearing officer "didn't do her job right," our review of the record indicates that the hearing officer's rulings were correct and that her decision was supported by the evidence.

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. 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 manifestly unjust would there be a sound basis to disturb those determinations. 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 the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge