

## APPEAL NO. 990867

A contested case hearing was originally held on December 15, 1998, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990140, decided March 8, 1999, the Appeals Panel affirmed the determination that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the first quarter and reversed the determination that the claimant's compensable injury does not extend to the left elbow, head, and damage to the claimant's eyeglasses and false teeth and remanded for the hearing officer to determine whether the injury to the claimant's left elbow and head naturally resulted from the compensable injury. The hearing officer was not required to hold another hearing and did not do so. She rendered another decision on March 30, 1999, in which she again determined that the claimant is not entitled to SIBS for the first quarter and that the injury to the claimant's left elbow and head did not naturally result from the compensable injury sustained on \_\_\_\_\_, and that the compensable injury does not extend to the left elbow and head. The claimant appealed, stated that he disagreed with those determinations, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (self-insured) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

### DECISION

We affirm.

In Appeal No. 990140, we held that the determinations that the claimant did not in good faith attempt to seek employment commensurate with his ability to work during the filing period for the first quarter for SIBS and that he is not entitled to SIBS for that quarter are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and affirmed them. We again affirm those determinations.

In Appeal No. 990140, the Appeals Panel set forth Finding of Fact No. 5 of the hearing officer; quoted extensively from Texas Workers' Compensation Commission Appeal No. 971314, decided August 25, 1997; stated that it was not clear whether she made a finding of fact whether the injury to the left elbow and head naturally resulted from the compensable injury; and remanded for her to make a finding or findings of fact and a conclusion of law concerning "naturally resulting" from the injury. Briefly, the claimant sustained a compensable injury to his back on \_\_\_\_\_; testified that after the injury, his right leg gives away and he falls; and testified that he fell on (subsequent date of injury), injuring his left elbow and head. In her Decision and Order issued after the remand, the hearing officer referred to Appeal No. 971314; and wrote:

In Claimant's case, there was insufficient evidence to show that the injury to Claimant's head and left elbow and damage to his eyeglasses and false teeth naturally resulted from the \_\_\_\_\_ compensable injury. Claimant has,

therefore, failed to show that the claimed injuries sustained as the result of the (subsequent date of injury) fall are compensable as the extent of his original injury.

The hearing officer made findings of fact and a conclusion of law consistent with the quoted statement.

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. 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 issue of whether the injury to the claimant's left elbow and head naturally resulted from the compensable injury, 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 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations that the injury to the claimant's left elbow and head did not naturally result from and are not part of the claimant's compensable injury are 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 those determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge