APPEAL NO. 990927

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) on remand was held on April 5, 1999. In Texas Workers' Compensation Commission Appeal No. 982722, decided January 6, 1999, we remanded the case for the hearing officer to rule on appellant's (claimant) "Motion for Production of all Relevant Documents." We were concerned that the claimant had made a motion to produce certain documents and statements which were admittedly in respondent's (carrier) possession, that claimant's attorney had called the Friday before the Monday CCH requesting those documents and that carrier's attorney had dismissed the request because the documents were too voluminous to send by facsimile transmission (fax). At the Monday CCH, carrier made no effort to produce those documents and the hearing officer failed to rule on claimant's motion.

Before the CCH on remand, the hearing officer granted claimant's motion and transcripts of certain tapes were given to claimant. The parties were given additional time to propound additional questions to the witnesses, whose statements were transcribed. Claimant failed to meet the deadline set by the hearing officer, "nevertheless, they [questions] were considered, but not allowed since they went outside the scope of the hearing officer's instructions." The hearing officer considered the statements, depositions on written questions and the answers and reaffirmed her findings that claimant had not sustained a compensable injury on _____, and that claimant did not have disability.

Claimant appealed, contending that the hearing officer had not complied with the Appeals Panel's instructions in Appeal No. 982722 and that the hearing officer's decision is against the great weight of the evidence and is "arbitrary, capricious and an abuse of her powers." Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Carrier responds to claimant's points, as it understands them, and generally urges affirmance.

DECISION

Finding that the hearing officer has complied with our remand in Appeal No. 982722 and that there is sufficient evidence to support the hearing officer's decision and order, we affirm that decision and order.

The background facts in this case were discussed in some detail in Appeal No. 982722 and will not be repeated here. Basically, claimant alleges that she slipped and fell on a concrete floor, injuring her head, low back and buttocks. Although there were several coworkers in the vicinity, apparently no one actually saw claimant fall, but rather heard her call out as or after she fell. Carrier's position is that claimant was a disgruntled employee who had previously been disciplined and was seeking to leave her employment. The factual recitation in Appeal No. 982722 sets out some of the inconsistencies in the testimony. Basically, whether or not claimant fell as she claimed and sustained the claimed

injuries is a factual determination that falls in the province of the hearing officer to determine. The hearing officer heard the witnesses, read their statements and was able to judge their credibility in making her decision. We have many times noted that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Our concern with the original CCH was that claimant had filed a motion for the production of certain documents that were in carrier's possession, and had followed up that motion the Friday before the Monday CCH, only to be told by carrier that they were too voluminous to fax and, carrier, in fact, never exchanged the requested documents. The hearing officer never ruled on the motion to produce. After our remand in Appeal No. 982722, the hearing officer granted claimant's motion and transcribed statements were exchanged. The hearing officer recites, in the decision on remand, that the claimant "requested to have the recorded statements played during the hearing with the witnesses present . . . ." That request must have taken place in some sort of prehearing meeting because that request is not evident on the audiotape provided to us for review. In any event, the request was denied but the parties were allowed to propound Depositions on Written Questions to the witnesses, which was done. We perceive no error in this procedure, although it does exceed the requirements of the remand. We find nothing in the transcribed statements, responses to written questions and additional documentary evidence which would require a reversal of the hearing officer's decision. The hearing officer's finding that claimant "failed to submit credible evidence to support her speculation of foul play regarding the accuracy of the recorded and transcribed statements . . ." is supported by the evidence.

On the merits, 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. Campos, *supra*. 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.

Regarding claimant's appeal in this case, as previously noted, the hearing officer fully complied with our instructions in Appeal No. 982722, *supra*, and even exceeded the requirements of the remand by affording claimant an opportunity to ensure that the transcribed statements were accurate. Further, we find that the hearing officer more than adequately explained her position on the merits in Appeal No. 982722, when the hearing officer stated in Finding of Fact No. 3 that claimant's testimony "was too inconsistent to be credible." The hearing officer did not believe claimant's testimony and that is something solely within the province of the fact finder. Claimant, in the conclusion of her appeal, comments that carrier "failed to meet their burden by their failure to present evidence rebutting the presumption that [claimant] was injured." The burden is on the claimant to prove that an injury occurred in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Service Lloyds Insurance Company v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Carrier is not required to prove that the claimant did not sustain an injury, and in these circumstances there is no "presumption" of a compensable injury.

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 affirm the hearing officer's decision and order that claimant had not sustained a compensable injury on _____, and did not have disability due to the claimed injury. We further affirm the hearing officer's decision in the remand hearing as fully complying with the remand.

Accordingly, the hearing officer's decision and order are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge