APPEAL NO. 990937

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was commenced on February 23, 1999, and concluded on March 30, 1999. The issues were:

1. Whether the compensable injury of _____ extends to and includes the [Appellant] Claimant's neck[.]

2. Whether Claimant has had disability[.]

With regard to those issues, the hearing officer determined that the compensable (lumbar back strain) injury of _____ (all dates are 1998 unless otherwise noted), did not include the neck and that claimant had disability from August 28th through October 21st, due to the lumbar injury, but has not had disability from October 22 to March 30, 1999, the date of the last session of the CCH.

Claimant appeals alleging his testimony and that of Dr. H, his treating doctor, established that "his neck problems began almost immediately after the accident," that Dr. WS is a respondent (carrier) doctor whose opinion should not be given much weight, and that claimant has had disability through March 30, 1999. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier responds, citing evidence that supports the hearing officer's decision, citing medical reports, records, and testimony that allegedly fails to establish a neck injury and generally urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

At the outset we note that this case had six witnesses, including three doctors, and two days of testimony. As noted above, the issues are specifically stated because much of the testimony dealt with matters not directly at issue but more with matters dealing with the credibility (or bias) of some of the witnesses. We will limit our brief recitation of the evidence to the issues directly before the hearing officer.

Claimant was a long-haul truck driver for the employer trucking company. Claimant testified that, while on a trip in City 3, he slipped and fell climbing down from his truck after cleaning the windshield on _____. It is undisputed that claimant grabbed a handrail on the side of the truck and did not fall to the ground. (The testimony covers the mechanics of the fall in detail.) Claimant contends that he "felt a pop" in his lower left back and wrenched his neck, back, and shoulder. Claimant's partner drove into (city 1) where claimant went to a hospital emergency room (ER), reported the injury, and flew home to City 2 the next day, (day after the date of injury). In City 2 claimant saw Dr. S who is characterized as the "company physician." Claimant testified that, over the ensuing

weekend (_____), his neck pain became worse. At some point, claimant spoke with his union representative who referred claimant to Dr. H.

The City 3 ER records recites a history to the slip, that claimant "twisted his lower back" and that "[h]e denies head or neck injury." Claimant was diagnosed with a lumbar back strain and carrier has accepted liability for that injury. A report from Dr. S of an _____ visit shows only complaints of a low back injury, that x-rays were negative and a diagnosis of a severe lumbar strain. An Initial Medical Report (TWCC-61) of an August 31st visit by Dr. H refers only to a more detailed examination after rest. A narrative report recites the slip incident and that a "Pain Diagram was noted for left shoulder, neck, arm, and left low back pain with generalized body aches." A spinal exam noted "tenderness throughout the cervical, thoracic and lumbar regions." A lumbar MRI was performed on September 2nd and showed a two mm bulge at L4-5. (Other abnormalities were admittedly preexisting.) A retake of the lumbar MRI showed a 3 mm bulge at L4-5. A September 2nd report from Dr. H indicates conservative care (ultrasound and medication) for the lumbar injury. Reports of September 23rd, 30th, and October 12th all refer only to the lumbar injury. Claimant was ordered to attend a required medical examination (RME) by Dr. WS and was accompanied to that examination by Dr. H. Claimant saw Dr. WS on October 21st. Dr. WS certified claimant at maximum medical improvement (MMI) on that date with a two percent impairment rating (IR). In an amendment to that report, dated November 30th, Dr. WS remarked:

> Let me clarify that this is not a cervical injury. The diagnostic studies performed to date, including lumbar MRI, show minimal to moderate degenerative/congenital conditions, which are ordinary diseases of life. No specific injury related pathology has been cited. Even [Dr. H's] own 9/30/98 dictations does not confirm cervical injury, describing a month after the injury date, '*He had additional complaints relative to his neck. The neck pain is secondary to treatment and aggravation due to posture. There was no direct trauma to the neck at the time of the accident. He was jerking a bar and hurt his back primarily. He may have damaged his neck at the time of the accident, based on his description of the mechanism of injury, and it may have gotten more inflamed over time and is now symptomatic.*' In my opinion, this is at most referred pain, and no cervical MRI would be justified. (Emphasis in original.)

In the meantime Dr. H had referred claimant to Dr. L who, in a report dated November 16th, noted full range of motion of the cervical spine with no evidence of "paravertebral muscle spasm" or paresis. Dr. L says that it was difficult "to prove whether or not he actually has any weakness" because objective testing did not correlate. An EMG study performed on November 10th suggested C-8 radiculopathy. In a report dated November 16th, Dr. H diagnosed a "[p]robable cervical herniated disc." In a Specific and Subsequent Medical Report (TWCC-64) and another report dated December 7th, Dr. H stated it was unsafe for claimant "to return to work or obtain [a] [functional capacity evaluation]" because of the possible herniated cervical disc.

The parties agreed to a cervical MRI which was performed on January 22, 1999, and was read as essentially normal by Dr. RS. Dr. H, Dr. RS, and Dr. WS all testified at the CCH. Dr. H testified that claimant, as early as August 31st, complained of neck pain, but conceded that some of his typed reports may have filled in gaps in handwritten notes. Dr. H testified that a finding of no herniated disc "does not preclude an injury to the cervical region." Dr. RS and Dr. WS both testified that there was "no anatomic evidence of a neck injury." Dr. WS testified that the two or three mm lumbar bulge was inconsequential and that any lumbar strain would have resolved by October 21st when he examined claimant. Dr. WS testified that claimant did not complain of a neck or cervical injury at that time.

The hearing officer sums up the evidence as follows:

> Although Claimant asserts that he initially complained of left shoulder and neck pain, there is a lack of documentation in his early records from [Dr. H], his treating doctor, regarding the neck. Claimant relies upon the records of [Dr. H] and [Dr. H's] testimony to support his assertion of neck problems. However, the findings and testimony of [Dr. RS] and [Dr. WS] are given greater weight than the findings of [Dr. H]. Both [Dr. RS] and [Dr. WS] find no neck injury and contradict the opinions of [Dr. H] as to the significance of cervical MRI findings. [Dr. RS] agrees that there is a 2mm or 3mm bulge in the cervical [sic lumbar] area, but unequivocally opines that there is no nerve root impingement. [Dr. WS] examined Claimant and found he was able to return to work on October 21, 1998. Also, the mechanism of injury and severity of injury (even if the neck were compensable) do not support disability beyond October 21, 1998.

Clearly, as the hearing officer recognizes, the evidence was in conflict with the testimony of Dr. H, being directly contradicted by Dr. RS and Dr. WS. Claimant attacks Dr. WS as being "merely the carrier-selected physician" who was not authorized to release claimant to return to work. While that may be correct, Dr. WS could certainly express an opinion as to when claimant reached MMI, which he did. It was the hearing officer who determined that disability ended on October 21st, based on the testimony of Dr. WS. That finding is supported by sufficient 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 judgement 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 judgement for his. 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge