APPEAL NO. 990977

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 April 12, 1999. The disputed issues were did the respondent (claimant) sustain an injury in the course and scope of his employment on _____, and did he have disability as the result of the claimed injury. The hearing officer made the following findings of fact and conclusions of law:

FINDINGS OF FACT

2. Claimant was pulling a cooler 80-100 feet in the air and felt a sharp pain in his back.

3. Claimant had a prior 1996 injury to the same area. Claimant told several coworkers that he thought the pain on _____ was from the prior injury because the pain was in the same location as the previous injury.

4. Claimant had returned to work in 1996 and had not sought any medical attention in 2 years for the 1996 back injury. Claimant had worked for 2 years with no complaints or missed time due to back pain.

5. Claimant sustained a back injury in the course and scope of his employment on _____.

6. The sole cause of Claimant's back condition is not the 1996 back injury.

7. Due to the back injury, Claimant was unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wages on July 22, 1998 and from July 29, 1998 through October 22, 1998.

CONCLUSIONS OF LAW

3. Claimant sustained a compensable injury on _____.

4. Claimant had disability on July 22, 1998 and from July 29, 1998 through October 22, 1998.

The appellant (carrier) requested review, urged that the determinations of the hearing officer are against the great weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain an injury in the course and scope of his employment and that he did not have

disability. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified, the carrier called five witnesses, and both parties introduced medical records. The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary will be repeated in this decision. The claimant, who worked as a pipefitter, injured his low back in 1996; was treated by Dr. G, a chiropractor; missed work for about two weeks; worked light duty for several months; reached maximum medical improvement on July 30, 1996, with an eight percent impairment rating; and worked until the claimed injury without receiving medical treatment or experiencing problems. The claimant testified that on _____, he was pulling a rope to raise a 10-gallon water cooler 80 to 100 feet, that he felt a sharp pain all over his upper and lower back, that he originally thought that his back problem on that day was from the prior work injury, that he did not think it was a new injury until his doctors told him that it was, that he reported that he was having pain and was taken to the medical person at the work site, that he was given Advil, that he told coworkers about the back pain on the day that he was injured, and that he told some of them that he was hot and tired. He stated that he did not work the day after he was injured, returned to work the next day, was laid off two days later, and had not worked since then because of the pain in his back. The claimant said that on July 29, 1998, he saw Dr. H, a doctor in (Country) close to where his relatives live in the United States; that Dr. H told him that his back was messed up and that it was a workers' compensation injury; that he got worse rather than better; that he went to Dr. G on August 24, 1998; that Dr. G told him that it was a new injury; that the Texas Workers' Compensation Commission sent him to Dr. S to see if it was a new injury; that Dr. S said that it was a new injury; that Dr. G did not treat him because the carrier disputed the claim; that he went to Dr. M, a chiropractor; that Dr. M said that it was a new injury; and that Dr. M treated him and would treat him even if he did not get paid.

Mr. LM, a foreman; Mr. F, who worked in the employer's medical office; Mr. E, the safety inspector; and Mr. FM, a pipefitter supervisor, testified that on _____, the claimant said that his back was hurting or was sore; that he did not mention a new injury; that he did not say that he hurt his back pulling a water cooler up to a work area; that he said that he was hurting because of hard work, his age, or a prior injury. The claimant did not disagree that he did not mention a new injury and mentioned other causes, but he did state that he told them about pulling the water cooler to the working area. He explained that he did not think it was a new injury until the doctors told him that it was.

A report of an MRI performed in March 1999 states that the images from 1996 and 1999 of the lumbar spine essentially showed no changes. Documents from Dr. G, Dr. M, and Dr. S indicate that they think that the claimant sustained a new injury in _____.

Dr. G testified that his records indicate that he first saw the claimant after the _____, injury, on August 24, 1998; but was not asked to give his opinion concerning a new injury.

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's determinations that the claimant sustained a compensable injury on _____, and that he had disability on July 22, 1998, and from July 29, 1998, through October 22, 1998, 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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge