

APPEAL NO. 991049

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 23, 1999. She (hearing officer) determined that the appellant (claimant) was not injured in the course and scope of his employment on _____, and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed, stated that his testimony was very credible, urged that the evidence established that he sustained a compensable injury and had disability, 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, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The claimant testified that on _____, he carried three panels to the inspection station; that he did not have any back pain while carrying the panels; that he had an attack of severe pain in his low back going down his legs to his knees as he walked back to his work area; that he walked another 15 or 20 feet and had three more attacks; that he went to the first aid station in the plant; that an appointment was made for him to see a company doctor at the plant; that he overslept and did not see the doctor; that a union representative told him that he could see his own doctor; that he went to Dr. D; and that Dr. D had an MRI performed and told him that he had herniated discs. The claimant said that sometimes he woke up tired and hurting, that he told a coworker that his back hurt, but that he never previously had the pain in his back and legs that he had on _____. During cross-examination, the claimant acknowledged that his superintendent thought that he had an absenteeism problem, but that the problem resulted from a mistake related to sick time off related to his heart attacks and vacation time off.

The self-insured contracted with (_____) for medical services provided at the plant where the claimant worked. Ms. M testified that she worked for _____ at the plant where the claimant worked; that the claimant came to her on _____, and that she completed a report concerning his visit; that he told her that he had the attack of back and leg pain while walking after taking panels to the inspection section; that an appointment was made for him to see a doctor at the medical area; that the claimant did not keep the appointment; that the claimant called her and told her that he did not want his superintendent to see him; that she told him that he could be met at the entrance and taken to the medical area without his superintendent knowing; and that the claimant did not come to be seen by the doctor.

A report of Dr. D dated January 11, 1999, states that the claimant was struck in the back at work and had shocking sensation down into his legs. A report of an MRI dated January 18, 1999, states that the claimant had small protrusions at L3-4 and L4-5. In a

report dated February 25, 1999, Dr. M stated that the claimant had radiculopathy into his legs bilaterally and could not return to work at the time.

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 testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 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). While a claimant's testimony alone may be sufficient to prove a claim, 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 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). In her Decision and Order, the hearing officer stated that she did not find the claimant's evidence to be credible. Her determination that the claimant was not injured in the course and scope of his employment on _____, is 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). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability is defined as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge