APPEAL NO. 991211

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 March 16, 1999, and May 4, 1999. She (hearing officer) determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from October 8, 1998, through the date of the hearing. The appellant (carrier) requested review, stated evidence favorable to its position that the claimant was not injured in the course and scope of his employment, urged that the determinations of the hearing officer are contrary to the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer. 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 that on _____, he removed the lugs on a wheel of an 18-wheel truck; that he pulled on the wheel to remove it from the truck, but that the wheel was stuck and did not come off; that he felt pain in his low back and left shoulder; that he changed the tire; that he went to Mr. J, the dispatcher, and told him that he had hurt his back; that he did not think that the injury was serious; that he normally worked 10 hours a day four days a week; and that he completed the shift. A transcript of questions by an adjuster and answers by the claimant indicate that he told Mr. KW, a dispatcher, that he was injured. The claimant stated that he said that because the adjuster told him that Mr. KW worked that night. Neither the transcript nor the audio tape of the interview indicate that the adjuster told the claimant that. He said that Mr. R was the other mechanic working that shift, that he told Mr. R what had happened, that he was hurting when he came to work the next day, that he worked a full shift, that he had Mr. R complete a brake job for him because he could not do the work because of his back pain, that he told Mr. K what had happened, and that Mr. K did not believe that he had hurt himself. The claimant stated that he was supposed to be off work Thursday, Friday, and Saturday; that he received a call from Mr. SW, who worked for the employer, at home on Thursday and was told that Mr. C wanted to see him; and that Mr. C advised him that he was terminated, that he had a leak on a trailer, and that he had messed up two or three times before. At first the claimant denied prior counseling sessions, but later admitted that in July 1998 he was suspended without pay for three days. He said that when he was terminated by Mr. C, he did not tell him about his injury. In answer to a question in an interrogatory, the claimant denied prior workers' compensation injuries; records from the Texas Workers' Compensation Commission were admitted into evidence; and the claimant testified that he remembered a pulled muscle in his low back in October 1986 and that he did receive some money for that injury. He denied having back problems after he recovered from that injury until he was injured in _____. The claimant stated that he went to a doctor on Monday or Tuesday,

that someone in the doctor's office called the employer, and that he was told that the carrier would not accept the injury.

Mr. KW testified that he was the dispatcher on the night shift at the time that the claimant claimed he was injured and that the claimant did not report an injury to him. Mr. K said that he was the lead man when the claimant claimed that he was injured; that if the claimant had told him that he was injured, he would have completed a report; that he did not complete a report or make an entry in a ledger when such things are recorded; that he first learned that the claimant was claiming an injury when a call from a doctor's office was received; and that he received a call from the claimant in which the claimant said that he or some of his friends would whip his butt for lying about the injury. The claimant admitted making the call. Ms. P testified that she is a secretary for the employer, that she completes accident reports, that she first learned that the claimant claimed that he was hurt when she received a call from a doctor's office, that she conducted a quick investigation, that she spoke with Mr. K and he said that he knew nothing about an injury, that she checked the ledger the day of the claimed injury and for a few days before and after that date and did not see anything about an injury, and that it is the policy to report an injury to the dispatcher and for the dispatcher to make an entry in the ledger. Mr. C stated that he reviewed the claimant's file with him; that he terminated the claimant because of his write-ups; and that when the claimant was terminated they did not exchange words, the claimant did not get angry, and the claimant just got up and left. Mr. C said that he did not have Mr. SW call the claimant to come in; that it was his understanding that the claimant was coming in to get his check; and that he requested that when he did, the claimant was to come to him.

Transcripts of interviews of the claimant and six other employees of the employer, including Mr. KW, who testified at the hearing, were admitted into evidence. No one stated that they saw the accident. Mr. T said that he did not remember exactly what the claimant was doing on _____; but that the claimant straightened up, the claimant said that he had a sharp pain in his back and appeared to be in pain. Mr. R stated that in _____ the claimant told him that he had hurt his back on another job at work, that he thinks that it was on another day, that the claimant asked him to help him remove a drum on a trailer because his back hurt, and that he did help the claimant. Mr. Mc said that on _____, the claimant told him that he thought that he had pulled a muscle taking a tire off a trailer. Mr. A said that he recalled the claimant changing a tire on a truck he drove in _____, that the claimant did not appear to be hurt, that he spoke with the claimant, and that the claimant did not say anything about hurting his back.

Dr. B testified that the claimant told him how he was injured; that he examined the claimant; that the claimant injured discs in his low back and sacroiliac region, tendons and ligaments in his left shoulder, and the thoracic spine; that he referred the claimant to Dr. E for the left shoulder and to Dr. N for the back; and that he considered an abnormal MRI of the left shoulder and loss of range of motion of the shoulder and an MRI of the back that showed a large disc herniation at L4-5 compressing on the L5 nerve root and a disc lesion at L5-S1 compressing the left S1 nerve root sleeve. Dr. B stated that the claimant had an old back injury, that it had no impact on the claimant's current condition, and that the

claimant was not able to work because of his injury. The record does not contain a report from Dr. M, but Dr. B testified that he does not agree with the report of Dr. M. Medical records from Dr. B's clinic, including a narrative summary from Dr. M-H, a neurosurgeon, are in the record.

The claimant contended that he injured himself attempting to remove the tire. The carrier contended that the claimant was not injured in the course and scope of his employment and filed a spite claim because he was terminated. 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 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. In the discussion in her Decision and Order, the hearing officer indicated that the claimant may not have been truthful in all of his testimony, but that his testimony regarding the mechanism of the injury was credible and was supported by statements of Mr. R and Mr. T about things that occurred before the claimant was terminated. She also stated that the medical records of Dr. B and Dr. M-H and MRI test results are credible, confirm damage or harm to the physical structure of the claimant's body, and are consistent with the mechanism of the injury. 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 are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 that the claimant sustained a compensable injury on _____, and had disability from October 8, 1998, through the date of the hearing, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge