APPEAL NO. 991232

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 May 5, 1999. The (hearing officer) determined that the respondent's (claimant) right eardrum was injured on _____, when an autoclave exploded while the claimant was at work; that the injury includes right ear perforation, right ear infections, and right ear tinnitus; and that the claimant had disability from September 21, 1997, through November 23, 1997. The appellant (carrier) requested review, summarized the evidence favorable to its position, urged that the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly unjust and manifestly erroneous, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a right ear injury in the course and scope of her employment and did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that at about 10:30 p.m. on _____, she took out her right ear plug before she entered the restroom; that there was an explosion when she was entering the restroom and she was pushed into the restroom; that she does not dispute that she was about 125 feet from the explosion and that, because of the location of where the explosion occurred and direction of the opening of the autoclave in which the explosion occurred, the main force of the explosion was not directly toward her; and that about six hours later her right ear started hurting real bad. In a note dated March 24, 1997, Dr. JG stated the claimant reported throbbing sensation in her ears and head; that tympanic membranes were clear and intact without infection; and that an audiogram was similar to a baseline done in February 1997. In a note dated March 27, 1997, Dr. DG wrote that the claimant was exposed to loud noise at work with subsequent perforation of the ear. Dr. DG referred the claimant to Dr. L. In a letter to Dr. DG dated August 11, 1997, Dr. L stated that there was a perforation in the right ear. On October 1, 1997, Dr. L performed a paper patch to repair the perforation. In a letter dated January 16, 1998, Dr. L stated that it was his presumption that the perforation was caused by the blast injury and in another letter dated June 23, 1998, stated that he could only say that the claimant had a traumatic perforation of her eardrum and gave a history of being exposed to a blast injury. The claimant testified that she was treated for a chronic right ear infection during the summer of 1997, that antibiotics did not clear up the infection, and that the doctor told her the infection had to be cleared up to see what was there.

Ms. J, a safety and environmental specialist for the employer, testified that there were about 150 people in the plant at the time of the explosion, that about 80% of the people in the plant are required to wear ear protection, that she was not aware of any employees other than the claimant claiming an ear injury as the result of the explosion, that

the claimant was to the side of the direction of the blast, and that there was a wall between the location of the blast and the claimant. Mr. F; a consultant in acoustics, industrial noise control, and micro vibrations; in a letter dated September 24, 1998, explained why he did not think the claimant's claim had merit. Dr. JF reviewed medical records of the claimant at the request of the carrier. In a report dated September 25, 1998, he said that the claimant's injury was consistent with an explosion-type event, but that he was unable to determine whether the injury is from the _____ event. At the request of the carrier, Dr. NR reviewed the medical records of the claimant. In a letter dated March 4, 1999, Dr. NR said that about six months after the explosion it was determined that the claimant had a small perforation in her right eardrum and explained why he did not believe a perforation of the eardrum of the claimant from the autoclave explosion would have been possible.

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. 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). In the statement of the evidence in his Decision and Order, the hearing officer stated that Dr. DG found a hole in the claimant's right eardrum and referred her to Dr. L. In his letter dated March 4, 1999, Dr. NR did not mention the perforation noted by Dr. DG in _____, but stated that about six months after the explosion it was determined that the claimant had a small perforation. It appears that the hearing officer considered the inconsistency in making his determination. 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, we will not substitute our judgment for his. 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:

_____
Thomas A. Knapp
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge