

APPEAL NO. 991271

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 (CCH) was held on June 1, 1999. She (hearing officer) determined that the appellant (claimant) did not injure himself while at work for the employer on _____; that from February 12, 1999, through the date of the CCH, the claimant's inability to obtain and retain employment at his preinjury wage was not due to a work-related injury; and that since the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed; contended that the medical evidence, including that of the employer-selected doctor, opined that claimant's condition appeared to be work related; urged that a finding of no injury in the course and scope of employment based on lay opinion is contrary to the great weight and preponderance of the evidence; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (carrier) replied, stated that the claimant gave varied descriptions of how the claimed injury occurred, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that the decision be affirmed.

DECISION

We affirm.

The claimant worked for a temporary agency. He testified that for about three weeks he was assigned to work for a company that builds things for exhibits; that he worked in a warehouse area and other workers obtained things to be used in making exhibits from the area in which he worked; that on _____, he was preparing lights to be used for a large order; that there were 12 lights in a box; that he sat on a tall stool that was about belt high; and that he would reach to get a box of 12 lights, place the box on a table, remove the lights from the box, place light bulbs in the lights that needed them, wrap the lights, place them in the box from which they were taken, and place the box on a high shelf. The claimant stated that he turned to the left; that he placed one hand on the table and the other hand on the stool; that he jumped off the stool; that he turned to the left and felt pain in his left leg; that that was the first time he felt pain that day; that he did not have pain while bending or reaching; that he had an injury to his low back and ankle in 1994; that before _____, he never had pain like he had on that day; that his supervisor saw he was in pain and asked what was wrong; that he told the supervisor his hip and leg started hurting and he did not know what was wrong; that the employer sent him to Dr. C; that Dr. C prescribed medication and took him off work; that he saw Dr. C twice; that Dr. B, a chiropractor, became his treating doctor; and that Dr. B took him off work and has not returned him to work.

A narrative report from Dr. C states that she saw the claimant on February 12, 1999, for a _____, injury; that the claimant reported he developed burning pain in his left hip and buttock radiating to his left leg shortly after suddenly rising from a sitting position; that examination revealed an abnormal gait, a significant left hip tenderness and pain upon

palpation aggravated by extension and straight leg raising; that that would cause severe thigh, buttock, and leg muscle spasms that radiated to his left calf; that left hip x-rays were negative for fracture or dislocation; that pain was not relieved by use of analgesics, anti-inflammatories, and muscle relaxants; that lumbar spine x-rays showed disc narrowing at L5-S1; that an MRI was recommended; that clinical pictures are suggestive of discogenic origin of the pain or Facet Syndrome; that the claimant had a previous back injury and that needs to be investigated to rule out aggravation of an existing problem; that the initial hip complaints appear to be part of the sciatic radiation of low back pain syndrome; that that could result from poor biomechanics or an occupation requiring prolonged abnormal positions, movements like sudden stretching, overhead reaching, or side bending or stress on a degenerative disc; and that the condition appeared to be work related; however, aggravation of an existing back condition cannot be ruled out. In a report dated March 9, 1999, Dr. B states that the claimant reported low back pain radiating into the left leg and that he sustained a work-related injury on _____. Dr. B wrote a letter dated March 30, 1999, in which he stated that the claimant came to the office for treatment of injuries he sustained in a work-related accident on _____; that part of the claimant's job description called for him to sit for extended periods of time and to reach over his head to test lights; that claimant noticed he was developing pain in his lower back; that while at work on _____, he arose from his seated work position and immediately felt sharp pain in his lower back; that this pain radiates into his left buttock, thigh, and calf; that he recommends the claimant undergo an MRI of the lumbar spine; that posttraumatic pathology is possible due to the soft tissue nature of this injury; and that the claimant was undergoing extensive treatment.

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). The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. In the statement of the evidence in her Decision and Order, the hearing officer wrote that she "did not find Claimant's accounting of the mechanism of his claimed injury credible." 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 determination that the claimant did not sustain a compensable injury 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).

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge