APPEAL NO. 991278

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 May 24, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The hearing officer determined that the claimant had disability beginning on January 27, 1999, and continuing through the date of the CCH. The carrier appealed, stated evidence favorable to its position, urged that the determination that the claimant had disability is against the great weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. A response from the claimant has not been received.

DECISION

We affirm.

The claimant injured his low back on _____. Dr. C recommended spinal surgery. The claimant testified that he had a previous discectomy but, at the time the surgery was recommended, he was afraid to have the fusion that Dr. C recommended. On August 21, 1998, the claimant began working for Mr. L reading oil field meters. The claimant stated that he was not released to return to work, but did so; that he worked with pain; that the pain got worse; that because of the pain, his brother helped him do some of the work; that he paid his brother to work for him; that Mr. L knew that his brother was helping him; that Mr. L said he could get the claimant's brother to work for the same amount of money and his brother could do more things; and that in December 1998 or January 1999 his brother got the job he had. The claimant said that he called Mr. L and told him he needed a letter stating he no longer worked for Mr. L, that Mr. L wrote a letter, that the letter is in evidence, and that things in the letter are not true. He testified that he was treated by Dr. H for the injury and for high blood pressure and that Dr. H would not see him immediately because of an unpaid bill. A note of a clinical visit with Dr. H dated January 27, 1999, states that the claimant missed appointments with Dr. C; that a letter from Dr. C dated January 12, 1999, states that Dr. C will follow up with the claimant regarding possible surgery; that the claimant has an appointment with Dr. C on February 5, 1999; and that the claimant "will be given release of work until appointment in February after he sees [Dr. C] or that he will proceed with back surgery or just medical management." A return-to-work slip from the Clinic dated January 27, 1999, states that the claimant may return to work on February 6, 1999. The claimant said that he spoke with people in Dr. H's office about the return-to-work slip and that the receptionist explained to him that the slip was made in error. He said that because of transportation problems he was not able to see Dr. C until March 5, 1999; that he is going to have back surgery; and that surgery is delayed until a blood problem is corrected. The claimant testified that he has not been able to work since January 5, 1999, because of his back pain.

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 determination that the claimant had disability beginning on January 27, 1999, and continuing through the date of the CCH 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.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge