APPEAL NO. 991385

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 June 14, 1999. The appellant (self-insured) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The hearing officer determined that the claimant's compensable injury extends to his temporal mandibular joint (TMJ) bilaterally. The self-insured appealed, stated that the claimant was required to provide expert medical evidence establishing to a reasonable medical probability a causal link between the compensable injury and his TMJ, urging that the claimant had not done so, and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. 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 was on a tractor when there was an explosion and the tractor began burning; that he tried to jump from the tractor, but struck part of it; that he fell to the ground; that his right leg hurt a lot and the left side of his face was numb from striking the ground; that the report of the injury does not mention his face, but people could see blood on his face; that he went to Dr. MS and told Dr. MS what had happened and that he had hurt his right knee and the left side of his face; and that Dr. MS gave him pills for pain. He said that about two months after the accident he told Dr. MS that his jaw was hurting; that about four months after the accident his jaw started locking; that the request to change treating doctors states that he wanted to change treating doctors because he was not getting treatment for his hand, but that also he was not getting treatment for his jaw; that Dr. M became his treating doctor; that he told Dr. M about the left side of his face; that Dr. M told him to go to his dentist; that he went to Dr. G, a dentist, in 1995; that Dr. G diagnosed TMJ and told him not to eat hard things; that he did not have TMJ before the accident; and that he does not grind his teeth. The claimant stated that Dr. O, a chiropractor, later became his treating doctor.

An Initial Medical Report (TWCC-61) from Dr. MS dated September 22, 1993, states that the claimant jumped from a back-hoe; that he hit his head and right thigh and knee; and that he has abrasions on the left side of his face and lower right leg. A TWCC-61 from Dr. M dated November 10, 1994, states that the claimant struck his face and head on the ground, that he injured his neck, and that he would begin physical therapy. The self-insured did not dispute the neck injury. In a note dated May 9, 1995, Dr. M said that the claimant was having some discomfort with his jaw and that he was going to see his dentist. A report from Dr. G dated July 3, 1995, indicates that the claimant had pain on the left side with limited opening; that he was very tender to muscle palpation and sometimes experienced lock jaw; that he has clicking on both joints; that he claimed to have had an accident on _____, that prompted the pain; and that splint therapy with muscle relaxing

therapy was recommended. In a Specific and Subsequent Medical Report (TWCC-64) dated January 19, 1997, Dr. O indicated that the claimant had headaches, neck pain, and TMJ and in a TWCC-64 dated April 1, 1997, Dr. O stated that the claimant continued to experience intermittent neck pain and had chronic TMJ that he said was related to his 1993 injury. In a letter dated February 3, 1998, Dr. O said that it was his opinion the claimant's TMJ condition was incurred due to his work-related injury in September 1993. On September 2, 1998, Dr. O stated that he had treated the claimant for neck and jaw pain and wrote:

> The cervical subluxation accompanied by the cervical disc herniations has contributed to his problem. The TMJ problem is related in my opinion to his injury, considering that the upper and mid cervical spine inervates these bones and muscles. The head (condyle) of the mandibular bone articulates with a disc. This disc is partially connected to the lateral pterygoid muscles. If the lateral and medial pterygoid muscles and temporal mandibular ligament are injured, it is my opinion that the injured person may experience T.M.J. problems or especially discomfort in chewing, as [claimant] has stated to me.

In a note dated January 14, 1998, Dr. JS, a dentist, stated that the claimant was suffering from bilateral temporomandibular dysfunction and that it could be secondary to trauma sustained in 1993 and in a letter dated December 16, 1998, said that records indicated that the claimant suffered blunt trauma to his face and lower leg in September 1993, that his condition is consistent with temporomandibular dysfunction of a non-surgical nature, and that the TMJ condition may be related to the injury at work. In a letter to the claimant dated March 28, 1998, Dr. H, a dentist, said that he was providing an occlusal orthotic appliance and that per the claimant's history, the pain, clicking, locking, and catching of the TMJ was related to an accident that occurred in 1993. In a letter dated March 11, 1999, Dr. G wrote that it is very possible that the claimant's TMJ condition is due to trauma as he believes.

In a letter to a third party administrator dated August 15, 1997, Dr. P, a dentist, stated that he evaluated the claimant on August 6, 1997; that on July 3, 1995, Dr. G noted TMJ problems secondary to the September 1993 fall; that the oral exam was three (should have been almost two) years after the fall; that had the symptoms been present for that length of time or had been acute, the claimant could not have waited that long for care; that other health care providers did not diagnose TMJ at the time of the accident; that there were no dental records, dental x-rays, or x-rays of the jaw available for review; that there were multiple wear facts on upper and lower teeth, indicating bruxism, or clenching of the teeth; that the maxillary right third molar and maxillary left molar are overerupted and out of alignment; that that leads to clenching, or bruxism, of the teeth; that lower third molars on the right and left are not present; that the remainder of the teeth are present with multiple areas of wear facets or wear patterns on the teeth indicating chronic, long-lasting bruxism; that the examination is consistent with TMJ; and that based on the records reviewed, there is no documentation that the TMJs were injured by the accident.

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 Texas Workers' Compensation Commission Appeal No. 941606, decided January 13, 1995, the Appeals Panel cited Insurance Company of North America v. Myers, 411 S.W.2d 710 (Tex. 1966) which discussed the concept of reasonable medical probability being more than a possibility and Insurance Company of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969), which stated that the finder of fact should be permitted to determine probability when medical opinion stated that the facts could give rise to the injury, so that the fact finder was not acting on conjecture, when other evidence also showed that the finding of causation was not unreasonable. A medical expert is not required to use the phrase reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 951417, decided October 9, 1995. 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). That a different factual determination could have been made based upon the same evidence is not a sufficient basis to overturn a factual determination of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb that determination. 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). We note that some of the findings of fact made by the hearing officer simply state what doctors' reports indicate. We find the medical evidence to be sufficient to support the determination of the hearing officer that the claimant's compensable injury extends to TMJ bilaterally.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge