APPEAL NO. 991469

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 7, 1999, a contested case hearing was held. With regard to the issues before him, the hearing officer determined that appellant's (claimant) compensable left foot injury of _____ (all dates are 1998 unless otherwise stated), did not extend to the low back and that claimant has not had disability due to the compensable injury.

Claimant appealed the key findings of the hearing officer, contending that the relationship between two witnesses had been "glossed over," that the hearing officer interfered with claimant's attorney cross-examining a witness, pointing out inconsistencies in the evidence, asserting that the medical evidence supports claimant's position and that the witnesses, in fact, did not see the accident. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds that claimant is just "re-arguing the facts" and urges affirmance.

DECISION

Affirmed.

Claimant apparently worked in the employer's warehouse where large boxes of conduits and other material were moved by pallet jacks. Claimant testified that on _____ a box of conduits was either lowered or dropped on claimant's left foot by a pallet jack being operated by Ms. M. Exactly how that happened is in dispute. Carrier has accepted liability for a left foot (two left toes) injury. Claimant testified that when the pallet fell, she jerked her foot from under the box, grabbed the side of the box and eventually ended up falling into the box. Claimant demonstrated how she "stood up like this" and how a chair had "scooted out" from under her. Mr. T and Ms. M testified that they witnessed the accident and that they did not see claimant fall into the box. Ms. M and Mr. T acknowledged that they were boyfriend/girlfriend at the time and since have gotten engaged. Testimony that they were living together as claimant alleged does not appear to be a relevant issue. Claimant says she fell into the box; Mr. T, who was a leadman and no longer works for the employer, and Ms. M say claimant did not fall in the box. Claimant says that Mr. T and Ms. M did not really see the accident because they were arguing with each other. We would emphasize that these are factual determinations strictly within the province of the hearing officer to resolve. Ms. M testified that she saw claimant's toes after the accident and they were red. Claimant testified that she began to have back pain several days later.

Claimant testified that she had never had back pain prior to this accident; however, some doctor's progress notes (apparently Dr. M) dated "11/10/97" indicate "neck and low back" complaints. Other progress notes record the letters "LBP," which carrier asserts means low back pain but which claimant says could stand for anything, including low blood pressure. Again, this is a matter for the hearing officer to resolve. An almost illegible

handwritten progress note of July 22nd records "PT [illegible] MidBack & LBP/S" and appears to refer to "T4-T2." Other notes refer to the left foot and mid back. Radiological studies dated August 10th note "[s]oft tissue injury or myofascial injury to the low back . . . " An examination by Dr. A dated December 4th had an impression of "[r]ule out lumbar disk syndrome with radiculitis to the left leg. Chronic cervical sprain with residual pain." A report by Dr. B notes thoracic spine pain complicated by scoliosis, lumbar disc syndrome with lumbar radiculitis. An MRI performed on January 6, 1999, shows a herniated disc at L4-5 compressing on the left L4-5 nerve root.

The hearing officer recited the testimony of the witnesses and made the following disputed findings:

FINDING OF FACT

4. On _____ Claimant injured her left foot when a box sitting on a pallet jack was lowered on her foot. Claimant did not injure her lumbar spine in an incident at work on _____.

CONCLUSIONS OF LAW

4. Because Claimant has not shown by a preponderance of the evidence that she had an injury to her back in an incident at work on _____ that injured her left toes, her back has not become part of the compensable _____, injury and the Carrier is not liable for benefits.

5. Because Claimant has not shown by a preponderance of the evidence that her _____ toe injuries caused her to be unable to obtain and retain employment at wages she earned before _____ from _____ until July 7, 1999 she does not have disability from the _____ injury for which TIBS [temporary income benefits] can be ordered.

Claimant contends that during the cross-examination of Ms. M, "the hearing officer interrupted and took over the questioning of the witness." Our review of the record only discloses that the hearing officer asked the witness what she actually saw, not what she thought might have happened. The hearing officer did not restrict or preclude claimant's cross-examination in any material way. Claimant also contends there is some confusion between this case and another workers' compensation case that claimant had a year earlier, in July 1997. There is also a dispute what the notation "LBP" means. Claimant contends that Mr. T and Ms. M "were too preoccupied arguing with each other, and had their backs turned away from [claimant] to be able to see how she hurt herself as the result of [Ms. M's] negligence" and that was the compelling reason which requires a reversal.

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). While a claimant's testimony alone may be sufficient to prove an

injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be 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). In this case, the hearing officer obviously believed Mr. T and Ms. M that claimant did not fall in the box and that the compensable injury was limited to the left toes. 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.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge