

APPEAL NO. 991530

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 24, 1999. He (hearing officer) determined that the respondent (claimant) injured his back in the course and scope of his employment on _____, and that he had disability on December 8, 1998; beginning December 11, 1998, through January 8, 1999; and beginning April 1, 1999, and continuing through the date of the hearing. The appellant (carrier) requested review, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury on _____, and did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that after lunch on _____, he was loading rolls of insulation on a large truck; that the rolls were to be stacked five high from the floor to the ceiling of the truck; that when he was pushing a roll at the fourth level he heard a pop in his low back and had a shocking feeling down the back of his legs; that he told Mr. A, his supervisor, what had happened; and that Mr. A told him that he was not used to the work, had pulled a muscle, should go home, take D's pills, soak in a hot tub of water, and be ready to work the next day. The claimant said that he did those things, that the next morning he could hardly get out of bed, that he called Mr. A and asked to go to a doctor, and that Mr. A did not send him to a doctor. The claimant stated that he did not have any problems with his back before he hurt himself at work. He denied telling Mr. A and Mr. C, a coworker, that he had hurt himself working on a car and stated that he does not own a car and does not work on cars. The claimant testified that he went to Dr. A, a chiropractor, on December 14, 1998; that Dr. A treated him with a TENS unit and took him off work; and that he could not work because of the pain. He acknowledged that he was in jail from January 9 to March 31, 1999, for writing bad checks.

Mr. A testified that he is the warehouse manager for the employer, that the claimant worked for a temporary agency one day before he was hired; that he worked for the employer for about five days; that he was late for work the first two days after he was hired, missed a day, worked a day, did not come back, and was fired; that the claimant told him that he did mechanic work on weekends; that one day the claimant told him that he had hurt his back working on a lady's car over the weekend; that Mr. C was present when the conversation took place; and that the claimant never told him that he was hurt at work. A transcript of an interview of Mr. C by an adjuster reveals that Mr. C said that he did not have a conversation with the claimant about working on cars, but that he did hear the claimant tell Mr. A that he hurt his back working on a car on a weekend.

In an initial examination report dated March 10, 1999, Dr. A stated that he first saw the claimant on December 14, 1998; that the claimant said that he was lifting insulation rolls weighing between 25 and 100 pounds and stacking them six to seven feet high when he felt pain in his back on _____; that examination revealed severe tenderness in areas adjacent to L4-5; that he diagnosed lumbar disc syndrome, sciatica with disc involvement, and lumbar myofascitis; and that, in his opinion, the claimant's current complaints are directly related to the incident on _____. In a note dated December 15, 1998, Dr. A said that the claimant was under his care and recommended that he be excused from work starting on December 12, 1998, until January 14, 1999, to avoid aggravation of his condition.

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 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 different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. 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 judgement 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:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge