APPEAL NO. 991539

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 22, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. A as an alternate treating doctor; that the claimant had disability from January 18, 1999, through the date of the hearing; and that the employer did not tender a bona fide offer of employment to the claimant. The carrier appealed, urged that the Commission abused its discretion in approving the change of treating doctors, that the determinations of the hearing officer are against 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 its favor. The claimant responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Only a brief summary of the evidence will be contained in this decision. On _____, the claimant injured his left arm and neck attempting to keep a piece of steel he was working on from falling off a table. He was placed on light duty by a doctor and worked in a tool room. The claimant was referred to Dr. K on November 11, 1998. The next day, Dr. K prescribed physical therapy (PT) and took the claimant off work until further notice. On January 8, 1999, a physical therapist recommended four more weeks of PT. A video of the claimant was made on November 29, 1998, and was sent to Dr. K. In a note dated January 14, 1999, Dr. K said that he reviewed a video showing the claimant loading a picnic table on a truck (the video does not show the claimant loading the table), pushing it, and doing fairly active things; that according to the PT report, the claimant was making progress; that he reviewed a job description; that the claimant should be able to tolerate returning to work; and that he will see the claimant back if he has any problem after returning to work. The claimant testified that after he had finished the prescribed PT, he went to Dr. K's office; that the nurse told him that Dr. K said that he was ready to go back to work; that he asked to see Dr. K; and that the nurse told him that Dr. K did not want to see him. The claimant said that he felt that he needed medical treatment; that he went to an attorney (not the attorney who represented him at the hearing); that the attorney told him that he could select any doctor he wanted to and provided him with the names of several doctors; that he chose Dr. A, a chiropractor, because she spoke Spanish; that he went to Dr. A; and that Dr. A took him off work before Mr. C, the employer's personnel manager, offered him a light-duty job. The claimant stated that the treatment he received after he saw Dr. A was different from the PT that he received at the direction of Dr. K and helped him more than did the PT he previously received. In a report dated January 15, 1999, Dr. A

took the claimant off work until further notice. In a report dated May 10, 1999, Dr. A said that the claimant had made significant progress and could benefit from an additional two weeks of rehabilitation and spinal manipulation. Dr. F examined the claimant at the request of the carrier and in a letter dated February 3, 1999, opined that the claimant had reached maximum medical improvement (MMI) with a zero percent impairment rating and could perform medium work. On March 25, 1999, the designated doctor stated that the claimant had not reached MMI and that he should continue with four to six weeks of spinal strengthening and flexibility. After some confusion about dates, Mr. C testified that he called the claimant on Friday, January 15, 1999; said that he expected the claimant to return to work on Monday; that the claimant did not; and that he prepared a letter to the claimant on Monday offering him a light-duty job. The letter is dated January 19, 1999; states that the claimant is expected to report to work on January 21, 1999; that the offer will remain open until Monday, January 25, 1999; that the offer is for a position within the restrictions of his physician; that his doctor has classified his work capabilities as light/heavy work lifting 33-66% of the day at 40 pounds and lifting 75 pounds maximum; and that the wages will be the same. The report of Dr. K does not provide restrictions and apparently the limitations came from the job description sent to Dr. K.

The hearing officer properly placed the burden of proof on the claimant and the carrier and properly applied the abuse of discretion standard to the change of treating doctor issue. 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 determinations are 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 the determinations 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:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge