APPEAL NO. 991775

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 July 12, 1999. After making findings of fact and conclusions of law concerning jurisdiction and venue, she made the following findings of fact and conclusions of law:

FINDINGS OF FACT

2. On _____, Claimant was working in her classroom when she was approached by a co-worker, [Ms. M-S].

3. Claimant and [Ms. M-S] began a discussion involving allegations of racism and a student that had been in both of the teachers [sic] class. The initial discussion revolved around an issue which effected [sic] the professionalism of a teacher and was work related.

4. Claimant escalated the discussion by ridiculing [Ms. M-S]. Claimant turned the discussion away from a work related issue and made it a personal attack by her comments to [Ms. M-S].

5. Claimant further aggravated the situation by flicking or throwing water at [Ms. M-S], hitting her in the face.

6. Claimant's actions resulted in the ensuring scuffle which was personal in nature and not related to work.

7. Claimant somehow had two cuts on her left upper extremity, one near her wrist and one near her ring finger, after the scuffle with [Ms. M-S] and Claimant's throwing the ladder.

8. There was insufficient evidence of how Claimant sustained the cuts.

9. Claimant did not sustain an injury in the course and scope of her employment on _____.

10. Due to the claimed injury, Claimant was not unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wage.

CONCLUSIONS OF LAW

3. Claimant did not sustain a compensable injury on _____.

4. Carrier [respondent, self-insured] is relieved of liability for compensation as the claimed injury, if any, arose out [of] an act of a

third person intended to injure the Claimant because of personal reasons and not directed at the Claimant as an employee or because of the employment.

5. Claimant did not sustain disability.

The claimant appealed Findings of Fact Nos. 4, 5, 6, 8, and 9; stated why she thought that each of those findings of fact is wrong; contended that the hearing officer overlooked several important facts and based her decision on irrelevant issues; and requested that the Appeals Panel reverse the decision of the hearing officer. The self-insured replied, contended that the claimant's request for review is defective since she did not appeal any conclusions of law, urged that the appealed findings of fact are not so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

We first address the adequacy of the claimant's appeal. As a general rule, an order should be based on a decision, a decision should be based on conclusions of law, conclusions of law should be based on findings of fact, and findings of fact should be based on evidence. Texas Workers' Compensation Commission Appeal No. 95816, decided July 5, 1995. If appealed findings of fact that are the basis for conclusions of law are reversed, the conclusions of law that are based upon the findings of fact that are reversed would also have to be reversed. Rarely does the Appeals Panel see, even from parties who are represented by experienced counsel, a request for review that asks that findings of fact, conclusions of law based upon those findings of fact, a decision based upon the conclusions of law, and an order based upon the decision be reversed. It would have been preferable for the claimant to have made a request for review disputing all four, but her failure to do so does not make her request for review a defective appeal.

The claimant, a school teacher, testified and had admitted into evidence 25 exhibits, including six statements. The self-insured called Ms. M-S, also a school teacher in the same high school; a principal; and a school police detective and had admitted into evidence 15 exhibits, including six statements and the claimant's answers to interrogatories. Of the four witnesses who testified, only the claimant and Ms. M-S were at the scene of the incident when it occurred. The Decision and Order of the hearing officer contains a detailed statement of the evidence. Briefly, it is undisputed that the claimant sent a note to Ms. M-S accusing her of telling a student, that both of them taught, that the claimant was a racist; that on _____, Ms. M-S went to the classroom where the claimant was to talk with her about the letter; and that the two teachers did not know each other before that day even though both of them had taught in the same high school for years. There are conflicts in the evidence concerning what happened soon after the discussion between the two teachers began. Their testimony is conflicting on how the altercation started, the extent of

he altercation, and if Ms. M-S hit or pushed the claimant.

Several definitions and the section in the 1989 Act on exceptions to liability apply to the case before us. Injury is defined as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. Section 401.011(26). Course and scope of employment is defined as an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. Section 401.011(12). Section 406.032 provides six exceptions for liability by a carrier. Two of the exceptions are if the injury was caused by the claimant's wilful attempt to injure herself or to unlawfully injure another person or arose out of an act of a third person intended to injure the claimant because of a personal reason not directed at the claimant as an employee or because of the employment. A compensable injury means an injury that arises out of and in the course and scope of employment for which compensation is payable under the 1989 Act. Section 401.011(10).

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. 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 her Decision and Order, the hearing officer stated that the evidence is different on what happened after the discussion between the claimant and Ms. M-S began and that neither of them were credible on what then occurred. Clearly, the testimony of the claimant and Ms. M-S are in conflict on what occurred on _____, and the hearing officer's statements in her Decision and Order are not inconsistent with the record. The hearing officer had the difficult task of determining what happened. 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). Findings of Fact Nos. 4, 5, 6, 8, and 9 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, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). There is no indication that the hearing officer did not properly apply the law to the facts.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge