APPEAL NO. 991776

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 20, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appealed, reviewed the evidence that she thinks established that she sustained an injury in the course and scope of her employment, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a compensable injury on _____, and that she had disability from February 16, 1999, to the date of the hearing. The respondent (self-insured) replied, urged that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be contained in this decision. The claimant worked as a laboratory technician for the self-insured for about seven and one-half years and contended that she sustained a repetitive trauma injury to her cervical area. The claimant testified about the work that she did as a laboratory technician, the manager of the laboratory testified about the work that is done there, and the carrier introduced a video showing activities in the laboratory. The evidence concerning repetitive movements of the head and neck is conflicting. The claimant acknowledged that she did not work on January 12 through 15, 18 through 22, 25 through 29, 1999, and February 1 through 4, 8, 11, and 12, 1999, because of an ankle injury. The claimant said that she could attend classes during working hours if she came in at other times to make up the work and that 11 hours was the most that she took in any semester. The laboratory manager said that in November or December 1998 he told the claimant that she could miss work to take one course a semester if she made up the work time she missed. The carrier introduced a document from a community college indicating that the claimant received credit for 11 hours the 1998 fall semester and took 16 hours and completed 13 hours the 1999 spring semester. In a video taken on April 29, 1999, the claimant does not appear to be in any discomfort.

In a letter dated March 18, 1999, Dr. G, a chiropractor, stated that the claimant's job duties resulted in her head being flexed forward at the neck for the majority of her workday and that he could say with a high degree of confidence that her signs and symptoms are work related. A report of an MRI dated April 22, 1999, indicates that at C5-6 the claimant had a 2-3 mm bulge or protrusion and 2 mm osteophytes and at C6-7 she had a 2mm disc bulge or protrusion and 1-2 mm osteophytes. In a report dated June 24, 1999, Dr. Nosnik (Dr. N), a chiropractor, said that the claimant's neck was always in a forward position at

work, that she had a lot of discomfort in her neck that radiated into her shoulders and upper extremity, and that it was his impression that she sustained an on-the-job injury.

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. The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. In his Decision and Order, the hearing officer said that he found none of the claimant's activities to be repetitious, traumatic, or injurious. 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). The hearing officer's determination that the claimant was not injured in the course and scope of her employment is 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).

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability. In addition, the hearing officer determined that the claimed injury did not result in the claimant being unable to obtain and retain employment at wages equivalent to the preinjury wage and the evidence is sufficient to support that determination.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Elaine M. Chaney
Appeals Judge