APPEAL NO. 991799

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 23, 1999. After making findings of fact and conclusions of law concerning jurisdiction and venue, he made the following findings of fact and conclusions of law:

FINDINGS OF FACT

2. On _____, Claimant [respondent/cross-appellant] entered Employer's gowning room to remove the gown and shoe covers worn in the prosecution of her work for Employer and, as she began to sit down on a metal bench provided by Employer for the convenience of its employees in dressing for work and removing the gowns at the end of the day, Claimant fell, striking her left hip and left low back on the metal bench.

3. Claimant sustained an injury to her low back and hip when she struck those body parts on the bench as she began to remove the gown and shoe covers after work.

4. On August 19, 1998, [Dr. B] certified that Claimant had reached maximum medical improvement [MMI] and assigned a 0% impairment rating [IR] for the injuries arising from the compensable injury of _____.

5. Claimant received notice of the certification of MMI and 0% IR on September 9, 1998.

6. Claimant did not dispute [Dr. B's] assignment of a 0% IR within 90 days of the date that Claimant received written notice of the IR.

CONCLUSIONS OF LAW

3. Claimant's compensable injury is a producing cause of her low back pain/sacroilitis [sic].

4. The first certification of [MMI] and [IR] assigned by [Dr. B] on August 19, 1998 became final under Rule 130.5(e) [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)].

The appellant/cross-respondent (carrier) requested review; appealed Findings of Fact Nos. 2 and 3, Conclusion of Law No. 1, the decision, and the order; urged that they 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 that her

compensable injury is not a producing cause of her low back pain/sacroiliitis. A response from the claimant has not been received. The Texas Workers' Compensation Commission (Commission) sent a copy of the hearing officer's decision and a form that advises parties of their appellate rights to the claimant. She completed the sample certificate of service that is in the form and wrote "0% disability." The carrier did not respond to the document filed by the claimant.

DECISION

We affirm.

The claimant was the only witness at the hearing. She testified that she had no low back problems before the _____ fall and that she now has low back pain that shoots down her hips into her legs. She said that she began working for a convenience store on August 18, 1998, and worked at various jobs until her child was born on June 3, 1999. Her answers to questions by the attorney representing the carrier and by the hearing officer resulted in some inconsistencies in her testimony. For example, she said that she sat on the bench for a few seconds before she fell, that she fell as she began to sit on the bench, and that she did not know if she was in the process of sitting down when she fell or if she slipped after she sat on the bench. A medical record from Dr. B dated three days after the accident states that the claimant had deep muscle contusions in the area of the gluteal muscle mass. On August 19, 1998, Dr. B certified that she reached MMI on August 13, 1998, with a zero percent IR. In a letter dated May 18, 1999, Dr. S, a chiropractor, stated that he was aware that in _____ Dr. B had diagnosed contusion of the left buttock or gluteus maximus muscle; that the records do not indicate orthopedic tests were performed at that time; that his diagnosis is left sacroiliitis with left piriformis involvement and possible herniated nucleus pulposus at L5-S1; and that in his opinion the injuries are directly related to the _____ accident.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. 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 a claim, 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 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). There are inconsistencies in the evidence, but the determinations appealed by the carrier 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 appealed by the carrier, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The Appeals Panel has held that just completing the certificate of service is not sufficient to appeal a determination of a hearing officer. In the case before us, the claimant did write "0% disability." We will treat that as an appeal of the sufficiency of the evidence to support the determination that the claimant's IR is zero percent. The record indicates that on September 9, 1998, the claimant received the Report of Medical Evaluation (TWCC-69) of Dr. B certifying MMI and IR and a letter advising her to contact the Commission if she wanted to dispute the report. The record does not indicate that she disputed the first certification of MMI and IR within 90 days of September 9, 1998. The determination that the claimant's IR is zero percent is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. King, *supra*; Pool, *supra*.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge