

APPEAL NO. 991808

A contested case hearing was originally held on April 15, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (carrier) appealed, contending that in sworn statements two workers denied that the claimed incident occurred and that the hearing officer improperly construed those sworn statements when she wrote that the statements "actually support the Claimant's [respondent] testimony—or at least do not negate it—that he was actually hit by the forklift/module." Because of the carrier's specific appeal concerning the hearing officer's comment on the evidence that the Appeals Panel reversed the determinations that the claimant sustained a compensable injury on _____, and that he had disability from February 1, 1999, through March 31, 1999, and remanded for the hearing officer to consider the conflicting evidence, to make findings of fact and conclusions of law, and to render a decision and order resolving the disputed issues. Texas Workers' Compensation Commission Appeal No. 991079, decided July 2, 1999. The hearing officer did not hold another hearing. She rendered another decision on August 3, 1999, in which she determined that the claimant sustained a compensable left shoulder, neck, back, and head injury on _____, and that he had disability from February 1, 1999, through March 31, 1999. The carrier appealed, stated that the only two witnesses to the claimed injury denied that it occurred, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant was not injured in the course and scope of his employment and that he did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

Appeal No. 991079, *supra*, contains a summary of the evidence. Briefly, the claimant testified that he was injured at work on _____, when he was struck by a module that was being moved with a forklift. The worker who was operating the forklift and another worker who was near by were interviewed by an adjuster and each swore that the transcript of the interview is true and correct. Each of the workers stated that the claimant was not struck by the module. An Initial Medical Report (TWCC-61) dated _____, states that the claimant told the doctor that he was hit by a piece of fiberglass, that the diagnosis was shoulder contusion, and that medication and physical therapy were prescribed. A physical therapy report dated the same day says that the diagnosis was left shoulder contusion and that there was tenderness without a hemorrhagic spot.

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. In her Decision and Order on remand, the hearing officer stated that the issue of credibility was pivotal; that the claimant's testimony was credible; that his testimony and other evidence established that he was injured on _____, when he was hit by a forklift carrying a heavy module; that the statements of the other workers were not compelling and did not establish that the collision or injury did not occur; and that the statements of the other workers did not lead her to question the credibility of the claimant's testimony, his prior statements, or the medical records. 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). That a different factual determination could have been made based upon the same evidence is not a sufficient basis to overturn a factual determination of a 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 determination that the claimant sustained a compensable injury on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb that determination. 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 determination of the hearing officer that the claimant sustained a compensable injury on _____, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The carrier appealed the determination that the claimant had disability from February 1, 1999, through March 31, 1999. It contended that since the claimant did not sustain a compensable injury, he could not have disability. Since we found the evidence to be sufficient to support the determination that the claimant sustained a compensable injury and affirmed that determination, we also affirm the determination that the claimant had disability.

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