APPEAL NO. 991842

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 4, 1999, a contested case hearing was held. The issues concerned whether the respondent, who is the claimant, sustained a compensable injury on _____, and had disability from such injury.

The hearing officer found that the claimant sustained a back injury on _____, in the course and scope of employment and that she had disability from her injury beginning on March 22, 1999, and continuing through the date of the CCH.

The appellant (carrier) has appealed, arguing that the great weight of the credible evidence does not support, and is against, the hearing officer's decision. The carrier argues that the claimant failed to show that working fewer hours was due to her injury and, therefore, did not prove disability. The claimant responds that the decision is sufficiently supported by the evidence.

DECISION

All dates are 1999 unless otherwise indicated. The claimant was employed as an aide/trainer in a group home for mentally retarded adults that was operated by the (employer). She primarily worked an overnight shift. She said that in the early morning hours of _____, as she lifted one of the patients, she strained her back. She went home and took prescription pain medication already on hand (which she said contained codeine). That evening, at 7:00 p.m., she was called to come to work a little early. The claimant, although first debating the characterization of what occurred, eventually admitted she had been caught asleep in the early morning hours of the following day. She said that this was as a result of the medication. She was eventually terminated for this reason on March 15th. The claimant said that prior to her termination, she was under the impression that she would only be given a brief unpaid suspension.

The claimant's supervisor was Ms. R. Ms. R and the claimant had different accounts of the time at which an injury was reported to Ms. R. The claimant stated she talked to Ms. R about her injury both before and after the sleeping incident; Ms. R was emphatic that she first heard about it after the claimant called to report that she had been caught sleeping. Ms. R and the claimant both agreed that her taking of prescription medication was given as the basis, although Ms. R said that the claimant initially told her she was taking Vicodin. (Her transcribed interview with the adjuster indicated that she had this prescription on hand following a difficult childbirth). The claimant thereafter went to a doctor, was taken off work, and remained off work until May 17th, when she went back to work part time as a sales clerk in a dress shop. The claimant said that pain would prevent her from working full time at this point, although she was aiming toward that. She worked some days for eight hours. Her weekly wage was less than she had been paid per week at her employer.

On March 5th, the claimant's doctor examined her and found that she had restricted lumbar range of motion and tenderness. She was diagnosed with back sprain. Off-work

slips from her doctor show that she was taken off work from March 11th through May 17th when she was released to limited duty.

A claimant's testimony alone may establish that an injury has occurred and that disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). As disability is defined in terms of the ability not only to work, but to work at wages equivalent to the preinjury wage, the hearing officer could find disability during the time that the claimant was working part time. We affirm the decision and order of the hearing officer as having sufficient support in the evidence.

In reviewing the record, we cannot agree that the great weight and preponderance of the evidence is against the hearing officer's decision on the matter appealed, and we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge