

APPEAL NO. 991845

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 21, 1999, with (Hearing Officer) presiding as hearing officer. She determined that the appellant (claimant) was returning home from work when she was involved in a motor vehicle accident (MVA) on _____; that she was not injured in the course and scope of her employment when she was involved in the MVA on that day; that the claimant was not in a state of intoxication when the MVA occurred; that the claimant is not barred from seeking Texas Workers' Compensation benefits because of an election to receive benefits under a group health insurance policy; and that since the claimant did not sustain a compensable injury, she did not have disability. The claimant, who was working as a home health care nurse at the time of the MVA, appealed the determinations that she was returning home when the MVA occurred, that she was not injured in the course and scope of her employment, and that she did not have disability; urged that the evidence established that she was traveling from a patient's home to the office of her employer at the time of the MVA; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she was driving to the office of her employer at the time of the MVA, that she was injured in the course and scope of her employment, and that she had disability. The respondent (carrier) replied, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that her decision be affirmed. The determinations that the claimant was not intoxicated at the time of the MVA and that she is not barred from seeking workers' compensation benefits because of an election of remedies have not been appealed and have become final under the provisions of Section 410.169.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a comprehensive statement of the evidence. Whether or not the claimant sustained a compensable injury and had disability depended on whether she was traveling from a patient's house to her home at the time of the MVA as the hearing officer found or whether she was traveling from a patient's house to the office of her employer. Only the evidence related to the travel will be summarized in this decision. The claimant testified that she went to a house in the morning to administer medication to children in the house; that she departed the house and traveled north on a street; that about one and one-half blocks from the house, the car she was driving struck a parked truck; and that her house was about three blocks north and one block east of where the accident occurred. She stated that, when she traveled from the area where she administered the medication to the employer's office, she routinely traveled north to get to a main road; drove east on that main road until she got to another main road; turned south on that road and traveled on it until she got close the employer's office; and turned off that main road and drove a short distance to the employer's office. The claimant explained that she traveled north, rather than south, on the road that the MVA occurred on

to avoid downtown traffic and signal lights and to use main roads that permitted quicker travel. A statement by an employee of the employer states that on the day of the MVA the claimant was scheduled to administer medication before school and that after she administered the medication at the house near where the MVA occurred, her duties for the day ended. In a statement another employee said that the claimant was off duty after she administered the last medication and that there was no need for the claimant to fill out any papers.

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. 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 determinations that the claimant was traveling to her home at the time of the MVA and that she was not injured in the course and scope of her employment are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly 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. *Id.* 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.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge