APPEAL NO. 991854

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 27, 1999. After making a finding of fact and conclusions of law concerning jurisdiction and venue, she made the following findings of fact and conclusions of law:

FINDINGS OF FACT

2. On _____ Claimant [appellant] stepped onto the top of a barrel, the lid shifted and caused Claimant to partially fall into the barrel and partially out of the barrel scraping his thigh.

3. Claimant reported the injury to his supervisor, who gave pain medication and checked on Claimant throughout the rest of the shift.

4. Claimant sustained an injury to his thigh in the course and scope of his employment on _____.

5. Claimant continued working following the fall at work on _____, without problems or pain, until his termination on March 29, 1999.

6. Claimant did not sustain an injury to his back, hip or waist in the course and scope of his employment on _____.

7. Due to the work injury, Claimant was not unable to obtain and retain employment at wages equivalent to Claimant's pre-injury wage.

CONCLUSIONS OF LAW

3. Claimant sustained a compensable injury on _____.

4. Claimant did not have disability as a result of the compensable injury.

The claimant appealed, contended that Findings of Fact Nos. 5, 6, and 7 and Conclusion of Law No. 4 are so against the great weight and preponderance of the evidence as to be manifestly unjust; pointed out evidence that is favorable to his position; and requested that the Appeals Panel reverse those determinations and render a decision in his favor. The respondent (carrier) replied, urged that the evidence is sufficient to support the appealed determinations, pointed out evidence favorable to its position, and requested that the hearing officer's decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a comprehensive statement of the evidence. Briefly, the claimant was descending storage racks, he stepped on the lid of a barrel, the lid moved, and the claimant went down with his left leg going into the barrel and his right leg staying outside the barrel. The claimant testified that he scraped the inside of his right thigh on the barrel; that his leg, buttocks, and back hurt; that he told Mr. M, his supervisor, what had happened; that he worked about eight hours to complete the shift; that he did not ask to go to a doctor; and that a company accident report was completed. He said that the pain did not go away the next day, that the next two days he asked Mr. M for medication for pain and was told to go to the nurse's office, that he did and the nurse's office was closed both times he went to it. The claimant stated that he was suspended on Friday, March 26, 1999, and was fired on Monday and that the reasons that were given were not related to the accident. He testified that he went to an attorney because of his termination, that the attorney referred him to Dr. P, that Dr. P placed him on light duty and has not released him to return to work at full duty, and that Dr. P is treating his back. Mr. M testified that the claimant told him that he fell in a barrel and scraped the inside of his thigh; that he did not say that he hurt any other part of his body; that he asked the claimant if he needed medical attention; that the claimant responded that he did not think so; that during the shift, he checked with the claimant three times and each time he said that he was okay; that he told the claimant to check with the nurse in the morning after she came in; that he did not notice the claimant limping or showing signs of injury; that he has a first aid kit with over-the-counter pain medication in it; that he provided the claimant medication the night he was injured; and that if the claimant had later asked for pain medication, he would have provided it. Mr. M said that he completed a form that was given to the nurses. An Initial Medical Report (TWCC-61) from Dr. P, a chiropractor, dated April 7, 1999, states that the claimant told him how the accident occurred and that the claimant injured his right medial thigh and low back when he fell with one leg in the barrel and the other leg outside the barrel.

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. 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. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. 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). In her Decision and Order, the hearing officer stated that she found the testimony of Mr. M to be credible. Findings of Fact Nos. 5, 6, and 7 and Conclusion of Law No. 4 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). Since we find the evidence sufficient to support the appealed determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge