APPEAL NO. 991902

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 3, 1999. With regard to the issues before her, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____, and that claimant did not have disability from November 24, 1998, through the date of the CCH, "excluding the period of January 6, 1999, through May 19, 1999" (while claimant was working for a different employer).

Claimant appealed, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that "there is no credible evidence contrary to Claimant's position," that claimant hit his head and sustained a cervical spinal cord injury. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant had been employed as a pipe fitter by a construction engineering company (employer) for about a week prior to _____. Claimant's testimony and the medical evidence establish that claimant was in a "severe motor vehicle accident" (not in issue here) in _____, which resulted in a discectomy and fusion at C4-5 and C5-6 by Dr. H, claimant's treating doctor for all the injuries. Claimant was assessed as having a 19% impairment rating (IR) for that injury. Claimant testified that Dr. H said that claimant would "not likely to be able to go back to labor." Claimant had another work-related injury (also not at issue here) moving a scaffold in _____. Claimant had additional cervical surgery in the form of an anterior microscopic cervical discectomy and fusion at C3-4 in January 1996. Claimant said that he received a 34% IR for this injury and that Dr. H again recommended that he not go back to work. In a January 6, 1998, note, Dr. H agreed that claimant could try to work as a safety inspector and foreman. Other reports from Dr. H indicated that claimant had "paraparesis" and spinal cord dysfunction from the second injury. Dr. H also took claimant off work for some periods of time in August 1998. Claimant testified that he was on medication (Neurontin) on the date of his last accident. The hearing officer, in her Statement of the Evidence, summarizes the medical evidence in some detail and we will not repeat it here.

Claimant testified that on _____, he was climbing up a ladder and when he reached the top (about 20 or 30 feet high) he hit his head on something and fell. Claimant was in a "yo-yo" safety harness and fell about five feet when a coworker retrieved him and helped him onto a scaffold. What, if anything, claimant may have hit his head on (claimant

was wearing a hard hat) is in conflict. A light five feet away is mentioned as is a "strut." Carrier and the employer contend that claimant could not have hit his head on anything, and that the fall was due to claimant's prior injuries. In evidence is an affidavit from RG, a coworker, which states in part that shortly before the accident claimant "was shaking a lot and acting weird" and that claimant said "I've had 3 surgeries in my neck. And I had a bad reaction to the pills . . . . He was shaking a lot." Claimant described the Neurotin he was taking as an anti-seizure medicine.

Claimant was taken to the hospital and a cervical CT scan was essentially normal. Claimant was seen by Dr. H on November 24, 1998, where Dr. H, in a note of that date stated:

> We know that he has had a cord injury with the previous comp injury, and had residuals on his left side, but with his further decrease in function, it makes me more concerned that there is something else within his cord. I do not feel that a CT scan is adequate to rule this out and as such I have recommended this MRI.

An MRI was performed and in a letter dated May 4, 1999, Dr. H was asked to compare MRIs of November 24, 1998; May 2, 1996; and November 7, 1995 (for the _____). In a report dated May 20, 1999, Dr. H notes differences and an enlargement of a disc herniation at C3-4 between the 1993 and 1996 studies but only "minimal segmental changes, but I think these are flow artifacts within his spinal cord" between the 1996 and 1998 studies. The hearing officer comments that the report "noted changes that occurred between the 1993 and 1996 MRI reports, but no changes or a worsening of Claimant's cervical area were noted in 1998 that were different from the 1996 report."

In an office progress note dated June 8, 1998, Dr. H notes "difficulty with carrier" (claimant testified medical benefits were paid by another carrier for the 1993 and 1995 work injuries), that there "is no question if [claimant] has been injured with his recent accident," that claimant "has significant weakness in his arm on the left side" and that claimant "has had a spinal cord injury in his neck."

On the issue of disability, claimant testified that he returned to work for another employer on January 6, 1999, working in an office sedentary job and worked through May 19, 1999, at a wage higher than his preinjury wage.

Claimant's position is that as a result of the _____, accident claimant "sustained a new spinal cord injury that was qualitatively and possibly more serious than his previous neck injury. . .[and/or claimant] has aggravated his old injuries to the point where they now constitute a new injury." Carrier's position is that claimant could not have struck his head on anything while climbing the ladder and that the fall was due to similar spontaneous episodes which resulted from paralysis of claimant's left side and/or the

medical evidence shows no worsening of claimant's prior condition, giving examples from the medical records of spinal cord damage, episodes of left-sided paralysis, and no exercise tolerance in claimant's left arm. Carrier also points out that claimant had been taken off work for some unknown reason earlier in 1998. Claimant replies that he passed a preemployment physical prior to beginning his job. The hearing officer determined in Finding of Fact No. 12:

> 12. The medical evidence established that on _____, Claimant did not re-injure his cervical area and/or left upper extremity including his thumb, when he fell about five feet from a ladder while working in course and scope of employment for Employer.

The medical evidence is much more extensive than was briefly summarized here and was capable of being interpreted in different ways. We have frequently held that 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. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. 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 determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

In that we are affirming the hearing officer's decision that claimant did not sustain a new compensable injury on _____, claimant cannot, by definition in Section 401.011(16), have disability. We further note that it is undisputed that claimant was able to obtain and retain employment at wages greater than his preinjury wage, at least from January 6 through May 19, 1999.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Judy L. Stephens
Appeals Judge