APPEAL NO. 991925

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 18, 1999, a contested case hearing (CCH) was held. With regard to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1999), or at any other relevant time; that no compensable injury was a producing cause of claimant's neck, thoracic, lumbar, sleeplessness and depression problems; and that claimant has not had disability. An issue regarding respondent's (carrier) timely contest of compensability was resolved by stipulation and was not appealed.

Claimant appealed, asserting that her work activities had made her "neck tight," caused the headaches, and ultimately her shoulder and back pain, sleeplessness and depression and that claimant had disability from this injury. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Carrier urges affirmance.

DECISION

Affirmed.

Claimant was employed as a factory worker making sanding belts. Employer's assistant manager testified that the belts are 103 inches long and the "short belts" are 18½ inches wide. The process involves "treating," "making," "rolling" and "feeding" the belts. Claimant testified that her shift began at 4:30 p.m. and that on _____ she had been moved to a new position working on short belts because of her lack of seniority. Claimant said she did not want to move to the new position because she was trying to get her production up at the old position. Claimant's supervisor testified that claimant was only working at "treating" and "rolling" because the other tasks were performed on a platform and claimant said she was afraid of heights. Claimant said the new job required her to pick up the belts while her old job did not. The belts weighed about five pounds.

Claimant testified that as she was treating the belts, she developed a headache and, although she had had previous sinus and migraine headaches, this headache was different, starting at the base of her neck. Claimant and her supervisor agree that claimant asked to leave early, at about 1:30 a.m., because of her headache. There is a difference of opinion whether claimant said the headache was work related, but notice is not an issue. Claimant testified that she went home, took some Tylenol and went to bed. Claimant said that when she woke up that morning she could not get out of bed because of low and mid back pain. Claimant said she called in that evening and said she was not coming to work. Whether claimant reported the cause being a work-related injury is in dispute. Claimant said that the

following day, _____, she again called in, spoke with Mr. F and told him about her pain, and that Mr. F told her to come in and took claimant to the company doctor, Dr. H.

In a note dated April 15th, Dr. H recites claimant's history and notes that claimant "has no specific history of trauma or injury . . . no radiation of pain into her arms or legs . . . no numbness or tingling . . . no fever or chills," but that "[s]he does have a history of having neck problems three or four years ago and saw a chiropractor for that at that time." Claimant explained that the neck problem was just a "crick" in her neck and the current pain was different. X-rays of the cervical and lumbar spine were normal. Dr. H diagnosed claimant with acute lumbar and cervical strain. Dr. H saw claimant again on April 19th with the same findings as on April 15th. In two off-work slips, both dated April 19th, Dr. H both takes claimant off work and releases claimant to light duty. In a subsequent off-duty slip, dated April 23rd, Dr. H takes claimant off work. In a slip dated April 30th, Dr. H again takes claimant off work and refers her to a neurologist. A note dated April 29th comments that claimant's lumbar and cervical MRIs were reviewed, that there was "very minimal bulging at C5-6 but otherwise looks normal," and lab studies were normal. On May 3rd comprehensive testing was done at a regional medical center where Dr. W found no objective symptoms and recommended a referral to physical medicine and rehabilitation as well as a "serum immunoelectrophoresis study done." In a note dated May 7th, Dr. H stated:

> Based on my findings as treating physician and the findings of [Dr. W], neurologist all studies were normal and we could find no organic basis for her stated problem. I therefore am forwarding this TWCC-69 [Report of Medical Evaluation] to state the MMI [maximum medical improvement] date and no rating will be determined.

Claimant testified that on May 6th, as she was getting up from a commode at her home, her legs "went numb" and she fell. (Claimant contended that this fall is a natural and direct result of her _____ injury.) Claimant subsequently sought treatment at (clinic) where she was seen by Dr. B and Dr. F. In a report of a May 19th visit, claimant was diagnosed as having cervical muscle spasms and "IVD disorder" and would require treatment by "chiropractic adjustments." Various blocks on a form were checked showing decreased range of motion (ROM) at all levels of the back and neck. A chart note dated May 12th confirmed that the x-rays and MRIs previously performed were essentially normal, but that claimant had restricted ROM. Various notes contain the same information, including a note dated May 26th which notes claimant has an attorney "and we are going to try and work with him to get the case approved so we can try and find out what is giving her the extent of her problems." Dr. F testified at the CCH and the hearing officer sums up that testimony as follows:

> [Dr. F] testified that Claimant's condition includes cervical, thoracic, and lumbar spasm, tenderness, and decreased [ROM] with depression and

sleeplessness. [Dr. F] testified that he feels that Claimant has "at least" a strain/sprain and probably also facet joint involvement with radiculitis.

Dr. F further testified that in his medical opinion that because claimant's symptoms, including sleeplessness and depression, were not present before the _____ injury and the mechanism of the injury was, in his opinion, consistent with the injury, that the work-related injury is the cause of claimant's condition.

The hearing officer found that:

FINDINGS OF FACT

5. The activities of flipping the ends of belts back to brush them with "treat," brushing "treat" on the belts with a paint roller, and picking up the belts and putting them on a table are not the sort of activities which lead to a headache.

6. Claimant's alleged cervical, thoracic, and lumbar symptoms did not appeal until the morning after the alleged injury.

8. Claimant has a prior history of headaches.

9. Claimant has a prior history of a "crick" in the neck.

10. Claimant did not want to be working in short belts.

Claimant disputes some of those findings, and others, pointing to her testimony and the testimony of Dr. F. Both parties, at the CCH, asserted that credibility was key to this case.

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 judgment 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 judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

In that we are affirming the hearing officer's decision regarding the lack of a compensable injury, claimant cannot, by definition in Section 401.011(16), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge