APPEAL NO. 991960

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 August 6, 1999, with (Hearing Officer) presiding as hearing officer. She determined that the appellant (claimant) timely notified the employer of the claimed injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer also determined that the claimant was not injured in the course and scope of his employment on _____, and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed; urged that the evidence established that on _____, he aggravated an existing back condition; argued that since he sustained a compensable injury, he had disability; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a compensable injury on _____, and that he had disability beginning on April 10, 1999, and continuing to the present. The respondent (carrier) replied, cited Appeals Panel decisions concerning aggravation of an existing condition, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant contended that he injured his low back on _____, pulling metal stakes out of the ground. The carrier contended that the claimant did not sustain a new injury on that day and that he did not sustain an aggravation of a prior injury on that day. A Report of Medical Evaluation (TWCC-69) dated November 26, 1996, and signed by Dr. A, a chiropractor and the claimant's treating doctor, and a narrative attached to the TWCC-69 indicate that the claimant injured his low back on _____, when he and another person lifted a mower and that the claimant reached maximum medical improvement on November 23, 1996, with a four percent impairment rating for loss of range of motion. Medical records from Dr. A dated December 6, 1997; February 26, 1998; April 11, 1998; and May 16, 1998, state that the claimant was complaining of low back pain and was suffering from late effects of an on-the-job injury that took place on _____. In a report dated April 14, 1999, Dr. A said that he saw the claimant on April 10, 1999; that on _____, the claimant suffered low back pain while pulling metal rods from the ground in his landscaping job; that he had a _____low back injury; and that, in his opinion, injury to the claimant's spine resulted from the _____, incident. A report of an MRI dated April 14, 1999, indicates moderate symmetrical posterior bulging at L4-5 with no evidence of stenosis and mild symmetrical posterior bulging at L5-S1. The supervisor of maintenance for the employer testified that the claimant had complained of back problems after the _____injury and was permitted to perform light duty. The claimant testified that he missed work because of back pain a few days after the _____low back injury, but never missed work for seven consecutive days because of the _____injury. He also said that the pain on and after _____, was in his low back, but that the pain is a little bit more to the side now. He stated that he has not worked since April 10, 1999.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. 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 a claim, 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 because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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). 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). The hearing officer made a finding of fact that the claimant did not sustain any new harm to his body on _____, while in the course and scope of his employment. There is no indication that the hearing officer did not properly apply the law concerning aggravation injuries. That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations related to whether the claimant was injured in the course and scope of his employment on _____, are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 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 on _____, the claimant cannot have disability as a result of that claimed injury.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Robert W. Potts
Appeals Judge