APPEAL NO. 991966

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 (CCH) was held. She (the hearing officer) determined that the respondent (claimant) injured her low back in the course and scope of her employment on _____, and that she had disability beginning on May 12, 1999, and continuing through the date of the CCH. The appellant (carrier) requested review, urged that those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. A response from the claimant has not been received.

DECISION

We affirm.

At the CCH, the parties stated that whether the claimant was injured in the course and scope of her employment depended on the credibility of the witnesses. The claimant testified she works cutting people's hair; that on _____, at about 4:30 p.m., she picked up a girl that was about three or four years old to place her in a chair; that she felt a tinge in her low back; that she continued to work, but her back got worse; that she called her husband; and that her husband picked her up at work at about 7:00 p.m. and took her to a hospital. She said that because of the low back pain she has not been able to work since the day she was injured at work. A receptionist for the employer testified that on _____, the claimant's husband came to the hair salon three times and spoke with the claimant. Another person who cuts hair for the employer testified that the claimant's husband came to the salon three times on _____, and spoke with the claimant and that on that day the claimant told her she injured her back at home during the weekend. The claimant was recalled as a witness; testified that while she was working on _____, her husband came to the salon one time; and denied telling the coworker that she injured her back at home.

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. It was for the hearing officer, as the trier of fact, to resolve inconsistencies and conflicts in the evidence. In a case such as the one before us where both parties presented evidence on the disputed issue of whether the claimant was injured in the course and scope of

employment and had disability, 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge