APPEAL NO. 992051

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On August 10, 1999, a contested case hearing was held. With regard to the issues before her, the hearing officer determined that appellant (claimant) had not sustained a compensable (hernia) injury on _____; that the respondent (self-insured) is relieved from liability for lack of timely reporting of the injury to the employer; and that claimant did not have disability.

Claimant appeals, asserting that he was unaware that he had a hernia until he was told by a doctor; that he reported the injury to his supervisor that day; and that he has had disability because of his injury. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The self-insured responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a truck driver and forklift operator by the self-insured. Claimant testified that on _____, he was driving a forklift in a "chicken house," that the ride was "real rough" and he hit a bump, and that he felt like something inside him was "pulling down." Claimant testified that when he got off the forklift he could not straighten up without pain; that he reported the incident to a supervisor, JT; that he was sent to the company nurse, who argued with him; and that he went to the hospital, where he had hernia surgery that day _____. Claimant was taken off work, the sutures removed a few days later and claimant was released to return to work. It is undisputed that claimant continued to work until October 5, 1998, when he was discharged for cause unrelated to any injury. Exactly what happened next is not clear. Apparently, claimant consulted an attorney (the reason was not developed) and shortly thereafter, D.C. Dr. G called claimant to set up an appointment and, on November 19, 1998, sent a bus to pick up claimant, along with some other patients. Dr. G took claimant off work. The parties and the hearing officer noted that some of Dr. G's intake notes had been blacked out by Dr. G's office. The hearing officer, in her Statement of the Evidence, comments that Dr. G's "records are not credible." Claimant testified that he then applied for and received unemployment benefits. Claimant is claiming disability beginning April 17, 1999, when his unemployment benefits expired.

Other evidence includes a hospital record of January 11, 1998 (almost four weeks prior to February 6th), where claimant presented with abdominal pain. The nursing assessment states "[p]t denies recent injury to area, but does lift heavy machinery " work." A two-inch bulge was noted and the assessment states, "[p]t states herniated area has been present x 3 mo." Handwritten notes by the doctor note "[p]atient has had off and on

pain WQ [with] mass for about 3 mos. 2 days ago he felt a pulling & heavy sensation at same area after heavy lifting [with] crampy sensation. Subsided after 3-4 hrs." Claimant was diagnosed as having an abdominal wall hernia and was instructed to "wear abdominal binder when working." Claimant denied that he was told that he had a hernia at that time, and did not wear a binder. JT testified that he (claimant) told him around _____, that claimant had a hernia and was going to get it operated on. JT denies that claimant said it was work related or that JT had sent claimant to the company nurse. No company nurse's notes are in evidence.

In evidence is an office note dated _____, from Dr. T, which notes that claimant "complains of a knot in his mid abdominal area. He noticed it three months ago. It does not appear to change in size." Dr. T diagnosed "[p]robable lipoma. Doubt epigastric hernia." Nonetheless, surgery, that day, "determined there to be an epigastric hernia with protrusion of pre-peritoneal fat." There was no mention of a forklift or work-related incident. A note dated February 16, 1998, noted follow-up of the epigastric hernia surgery and removal of sutures. It is undisputed that claimant did not have any other medical treatment from February 16, 1998, until he saw Dr. G on November 19, 1998. On an Initial Medical Report (TWCC-61) of the November 19th visit, Dr. G notes a history that claimant's injury occurred "while working on 2/4/98" when he was driving a forklift and "hit a hole." Dr. G continued to see claimant periodically through March 5, 1999, and gave claimant various off-work slips. Claimant presented to another hospital on March 4, 1999, complaining of abdominal pain. In a form report dated June 25, 1999, Dr. T checks "Yes" to the question, "Is the abdominal hernia a work related injury?" Claimant also saw Dr. M in conjunction with a request for county welfare benefits in May and June 1999. In a July 1, 1999, "To Whom It May Concern" note, Dr. M comments:

> [Claimant] has sustained a painful hernia which prevents him from doing any work as a trucker. He should not return to work until hernia is repaired. This is a work related injury and we are awaiting a decision as to whether or not this hernia will be financed by the insurance company.

The hearing officer comments:

> Claimant's evidence is insufficient to support a finding that he sustained an injury in the course and scope of employment on _____. If Claimant sustained a second hernia, it was not incurred working for employer and this is the cause of Claimant's inability to work after [sic, April] 17, 1999.

Claimant, in his appeal, contends that he did not know he had a hernia when he went to the hospital on January 11, 1998, and did not know he had a hernia until Dr. T told him so on _____. Claimant contends that both Dr. M and Dr. G relate the hernia to his work. Claimant also contends that he reported a work-related injury to JT on _____.

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 hers. 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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Robert W. Potts
Appeals Judge