

APPEAL NO. 000023

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 December 13, 1999. The hearing officer determined that the respondent (claimant) injured the back of his head and neck in the course and scope of his employment on _____, and that he had disability which began on July 4, 1999, and had not ended as of the date of the hearing. The appellant (carrier) requested review, urged that the determinations of the hearing officer are so against the great weight of the evidence as to be manifestly unjust and wrong, summarized evidence favorable to its position, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury and did not have disability. The claimant responded, summarized evidence that supports the decision of the hearing officer, urged that it is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant, who worked as a mechanic, testified and had medical records, statements, and other document admitted into evidence. The carrier called the store manager of the location where the claimant worked and the claimant's immediate supervisor and had admitted into evidence medical records, videotapes of the claimant, surveillance reports, and other documents. The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant stated that he hit his head when aligning a vehicle on _____; that he had neck discomfort at the time; that the next day, a Sunday, he had severe neck pain; that Monday afternoon he went to the store and told his supervisor that his neck hurt and that he did not know how and when he hurt his neck; that he went to an emergency room and then knew he had hurt his neck when he hit his head; that before he was injured, he also worked in a part-time job that involved lighter work; that he was told he could not return to work for the employer until he received a medical release; that he continued to work at the part-time job; that while working for the employer, he made from \$500.00 to \$800.00 a week; and that the week before the hearing, he made about \$272.00. The claimant said that about two months before the injury, he moved a couch to his mother's garage by himself; that he moved to another house the day after he hit his head; that his brother, wife and children helped with the move; and that he did not lift anything heavy during the move. A written statement signed by the claimant's brother is essentially consistent with the testimony of the claimant. A report of an MRI dated July 6, 1999, indicates a disc protrusion and some associated spondylosis at C5-6.

The store manager testified that on _____, he did not hear the claimant say he hit his head while performing an alignment; that on Monday the claimant told him he had hit his head and injured his neck; the claimant's supervisor told him the claimant told him he had hit his head but did not know how he had injured his neck; and that the supervisor told

him the claimant told him he had moved a couch on his back down a stairwell. The claimant's supervisor testified that he first learned of the claimed injury on Monday; that the claimant then told him he was not sure when, where, or how he had injured his neck; and that the claimant did not say he injured his neck moving furniture.

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). 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. 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. The hearing officer made several findings of fact to resolve the disputed issues including that the claimant's testimony that he hurt his head and neck at work was not overcome by the testimony of the two witnesses called by the carrier and that the claimant's income was decreased due to his _____, injury. 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 are 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.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge