

APPEAL NO. 000059

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 1999. The issues at the CCH reported out of the benefit review conference (BRC) were whether the appellant (claimant) sustained a compensable injury on or about _____, and whether she had disability. At the hearing, the claimant urged that _____, was the wrong date, that she had just used that date when told that it had to be within 30 days of when she reported an injury, and that she sustained back injuries on _____, and _____, and had disability from July 23, 1999, to the present. The hearing officer determined that the claimant did not sustain an injury in the course and scope of her employment on either _____, _____, or _____, and that not having sustained a compensable injury, she did not have disability. Claimant appeals the finding of no injury and other statements in the evidence asserting that the hearing officer based his decision on statements of other people and that they should not be given more weight than her testimony. She asks that a decision be rendered that she sustained a compensable injury and that she had disability. Respondent (carrier) urges that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks for affirmance.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth adequately and fairly the pertinent evidence in the case and it will only be summarized here. Initially, and throughout the BRC, the claimant claimed she injured her back on _____. At the hearing she testified that she injured her back on _____, and again on _____, while moving furniture and an office machine, respectively. She stated that she reported, and as is noted in initial medical history, that she sustained an injury on _____, and explained that the reason she stated _____, was because when she was initially asked for a date of injury in August 1999, she was told it needed to be within 30 days and she put down _____. A medical report of August 12, 1999, reflects claimant stating she was injured on _____, and that there was some further injury on _____. In any event, on July 25, 1999, the claimant states she went to an emergency room and the records show complaint of back pain "x 3 weeks." Claimant was eventually diagnosed with a herniation at L4-5, and subsequently underwent a lumbar epidural steroid injection. Evidence showed that the claimant was terminated from employment for other reasons effective August 3, 1999, and that she reported her injury was work related on August 5, 1999 (her mother had called on July 25, 1999, and told the employer claimant would not be in and that claimant had hurt her back). The claimant states she went to work for less money at another employer on or about November 1, 1999.

Carrier presented statements from claimant's supervisor which stated that on June 1, 1999, claimant told her she injured her back on Memorial Day when at a lake and that she complained of back pain over the next several weeks. A statement from another employee also stated that claimant said she had injured herself over the Memorial Day weekend, and that she had complained of back pain from about the beginning of June and that it kept getting worse. Claimant denied injuring her back on Memorial Day weekend or telling anyone she did.

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 is apparent that the hearing officer did not find the claimant's testimony persuasive particularly in view of the conflicting dates of claimed injury, including in a medical report, and the statements of the supervisor and other employer witnesses. 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 judgement 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 judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. Accordingly, we affirm the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge